

Strengthening the Rule of Law or Serving as a Tool of War?
A Critical Analysis of United Nations Sanctions

By

Jeremy Matam Farrall

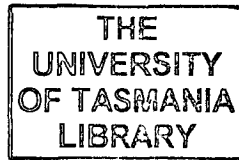
B.A. (Hons), LLB (Hons), University of Melbourne

Submitted in fulfilment of the requirements for the
Degree of Doctor of Philosophy

University of Tasmania
Faculty of Law

August 2004

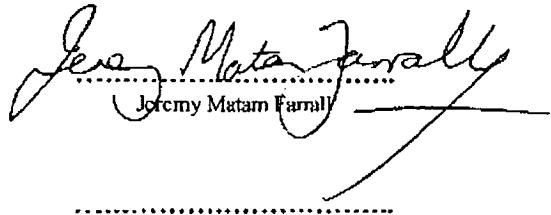
Cent
Thesis
FARRALL
Ph. D.
2005



Statements

This thesis contains no material which has been accepted for a degree or diploma by the University or any other institution, except by way of background information and duly acknowledged in the thesis, and to the best of the candidate's knowledge and belief no material previously published or written by another person except where due acknowledgement is made in the text of the thesis.

This thesis may be made available for loan and limited copying in accordance with the Copyright Act 1968 (Cth).


.....
Jeremy Matam Farall
.....

The information in this thesis is up-to-date as of 1 July 2004

Graduated Dec. 2005

For Lyn – my soul-mate, my life

And for Stephanie and Lyndsay – my role-models, my beloved friends

Abstract

This thesis explores the relationship between United Nations sanctions and the rule of law. Its primary contention is that sanctions have been applied in such a way that they have undermined the rule of law, thus weakening the authority and legitimacy of the U.N. Security Council and the U.N. sanctions system. As a consequence, States are less likely to comply with their sanctions obligations to the extent necessary to ensure that sanctions are effective. The challenge is therefore how to modify the Security Council's sanctions practice so that sanctions command such respect and inspire such confidence that States both desire and feel compelled to implement sanctions fully and effectively.

The thesis proceeds in four Parts. Part I sets the stage for analysis, introducing U.N. sanctions and proposing a basic accountability-based model of the rule of law, according to which the central aim of the rule of law is to prevent the abuse of power. Part II explores the origins of the Security Council's sanctions powers, tracing the path leading to the enshrinement of the Security Council's sanctions powers in the U.N. Charter and describing the legal basis for the application of sanctions. Part III illustrates how the Security Council has acted upon its sanctions powers in practice, charting the manner in which the Council's sanctions-related decisions have shaped the contours of the U.N. sanctions system. Part IV then operationalises the theoretical framework for analysis developed in Part I, critically evaluating the extent to which sanctions have strengthened the rule of law. It concludes that the U.N. sanctions system exhibits shortcomings in respect of each of the key elements of the rule of law and makes proposals for reforming the Security Council's sanctions practice so that sanctions can strengthen, rather than undermine, the rule of law.

Acknowledgements

This journey began in Hobart in March 1998 and was completed in New York City in August 2004. I am indebted to many people, whose support, guidance and inspiration helped me reach my destination. I am particularly indebted to my supervisors, Professors Donald Chalmers, Stuart Kaye and Margaret Otlowski. Don, thank you for your cheerful support and your vote of quiet confidence. Stuart, your mentorship has been superb. Thank you for your patience, understanding and wisdom. Margaret, thank you for your friendly encouragement and attention to practical details. I am also grateful to my initial supervisor, Professor Ryszard Piotrowicz, who encouraged me to upgrade this thesis from a Masters of Laws to a PhD.

I was first drawn to the idea of undertaking a study of U.N. sanctions while working for the Quaker United Nations Office in New York in 1996-7. I remain extremely grateful to my QUNO colleagues for their friendship and inspiration, including Stephen and Berit Collett, Lori Heninger, Judy Inskeep, David Jackman, Jack Patterson and Maya Wilson Chakko.

My writing and thinking have benefited enormously from the thoughtful and challenging advice of colleagues and friends. At the University of Tasmania I am thankful to Gino Dal Pont for providing insightful suggestions to improve the manuscript. In New York it has been my privilege to receive invaluable feedback and warm friendship from Nehal Bhuta, Michael Bliss, Peter Danchin and Fred Soltau. My practical understanding of the Security Council's practice has also been enriched through the tutelage and mentorship of colleagues in the Security Council Affairs Division of the United Nations Department of Political Affairs, where I have worked since May 2001. Those colleagues include Nicole Lannegrace, Linda Perkin and Susan Hulton.

On a financial level, I am most grateful for the support of a Tasmania Research Scholarship, which sustained my early research. A generous grant from the Law Faculty also enabled me to undertake a formative international research trip, from December 1998 until May 1999, encompassing visits to Japan, Canada, the United States, the United Kingdom, Switzerland and Germany. On that trip I benefited from time spent as a visiting researcher at the New York University Law School, and as a visiting scholar at the Max Planck Institute for Foreign and Comparative Law. I also met with many welcoming academics and practitioners, and consulted exceptional libraries.

But most of all, I thank from the bottom of my heart my family, which I wish was not so far-flung. To Reia, Nicolas and Eloise Anquet, my sister, brother-in-law and niece, thank you for your cheerful and fun-loving friendship and support. To my parents-in-law Kim and Bob Henderson, thank you for your gentle and loving encouragement to pursue my education as far as I could. To my parents, Stephanie and Lyndsay Farrall, you are my role-models in every aspect of life and I still hope I grow up to be like you. Thank you for your unstinting support and your invaluable doctoral counselling and feedback. And to my incredible wife Lyn Nguyen Henderson, who has sacrificed so much that I may type these words, thank you for your critical proofreading eye, your rejuvenating pep-talks, your wisdom-filled strategic advice and your boundless love and care. *"Je t'aime à la lune et retour."*

- Jeremy Matam Farrall

New York City, August 2004

Abbreviated Table of Contents

<i>Statements</i>	I
<i>Abstract</i>	V
<i>Acknowledgements</i>	VII
PART I. SETTING THE STAGE FOR ANALYSIS	1
1. INTRODUCING U.N. SANCTIONS AND THE PATH AHEAD	3
2. U.N. SANCTIONS AND THE RULE OF LAW: A THEORETICAL FRAMEWORK FOR ANALYSIS.....	21
PART II. THE ORIGINS OF THE U.N. SECURITY COUNCIL'S SANCTIONS POWERS	43
3. FROM AEGINA TO ABYSSINIA: A PREHISTORY OF U.N. SANCTIONS	45
4. THE LEGAL FRAMEWORK GOVERNING THE APPLICATION OF U.N. SANCTIONS.....	67
PART III. SANCTIONS IN PRACTICE: THE SECURITY COUNCIL'S USE OF SANCTIONS AND THE EVOLVING U.N. SANCTIONS SYSTEM	87
5. THE SECURITY COUNCIL'S MANY AND VARIED SANCTIONS RÉGIMES.....	89
6. ESTABLISHING THE LEGAL BASIS FOR SANCTIONS: IDENTIFYING THREATS, INVOKING CHAPTER VII, AND SETTING OBJECTIVES.....	111
7. DELINEATING THE SCOPE OF U.N. SANCTIONS.....	161
8. FINE-TUNING SANCTIONS: CLARIFYING SENDERS AND TARGETS, DEFINING TEMPORAL APPLICATION AND ADDRESSING UNINTENDED CONSEQUENCES.....	199
9. BESTOWING RESPONSIBILITY UPON SUBSIDIARY BODIES FOR SANCTIONS ADMINISTRATION AND MONITORING.....	219
10. BESTOWING RESPONSIBILITY UPON OTHER INTERNATIONAL ACTORS FOR SANCTIONS MONITORING AND ENFORCEMENT	273
PART IV: STRENGTHENING THE RULE OF LAW: A CONSTRUCTIVE CRITIQUE OF U.N. SANCTIONS	319
11. STRENGTHENING THE RULE OF LAW OR SERVING AS A TOOL OF WAR? A CRITICAL ANALYSIS OF U.N. SANCTIONS.....	321
12. CONCLUDING REMARKS AND SUMMARY OF PRACTICAL RECOMMENDATIONS.....	395
TABLES	399
APPENDICES	421
BIBLIOGRAPHY	817

Extended Table of Contents

<i>Statements</i>	I
<i>Abstract</i>	V
<i>Acknowledgements</i>	VII
PART I. SETTING THE STAGE FOR ANALYSIS	1
1. INTRODUCING U.N. SANCTIONS AND THE PATH AHEAD	3
1.1 <i>Central thesis and key objectives</i>	7
1.2 <i>Setting the scope of analysis: defining U.N. sanctions</i>	8
1.3 <i>Research Methodology</i>	15
1.3.1 Literature reviews	15
1.3.2 Off-the-record interviews and practical professional experience	16
1.4 <i>The Path Ahead</i>	17
2. U.N. SANCTIONS AND THE RULE OF LAW: A THEORETICAL FRAMEWORK FOR ANALYSIS	21
2.1 <i>The relationship between the U.N. Security Council and international law</i>	22
2.2 <i>The relationship between the Security Council and the rule of law</i>	26
2.3 <i>Proposing a basic model of the rule of law and a framework for analysis</i>	32
2.3.1 A working model of the rule of law	36
i. Transparency	38
ii. Consistency	38
iii. Equality	39
iv. Due Process	39
v. Proportionality	40
2.3.2 A framework for subsequent analysis	40
PART II. THE ORIGINS OF THE U.N. SECURITY COUNCIL'S SANCTIONS POWERS	43
3. FROM AEGINA TO ABYSSINIA: A PREHISTORY OF U.N. SANCTIONS	45
3.1 <i>International coercion short of force in ancient and medieval Times</i>	47
3.2 <i>International coercion short of force under classic international law</i>	49
3.2.1 Retorsion	51
3.2.2 Reprisals	52
3.2.3 Pacific Blockade	54
3.2.4 The possibilities and limitations of coercive measures short of war under classic international law	56
3.3 <i>Non-military sanctions under the League of Nations System</i>	58
3.4 <i>Learning from the League's Experience</i>	65
4. THE LEGAL FRAMEWORK GOVERNING THE APPLICATION OF U.N. SANCTIONS	67
4.1 <i>The birth of the United Nations and the creation of the U.N. Security Council</i>	67
4.2 <i>The legal basis and effect of the Security Council's sanctions powers</i>	72

4.3	<i>When theory and practice diverge: the Charter's implementation lacuna</i>	82
PART III.	SANCTIONS IN PRACTICE: THE SECURITY COUNCIL'S USE OF SANCTIONS AND THE EVOLVING U.N. SANCTIONS SYSTEM	87
5.	THE SECURITY COUNCIL'S MANY AND VARIED SANCTIONS RÉGIMES.....	89
5.1	<i>The Security Council's sanctions practice and the evolution of the U.N. sanctions system</i>	89
5.2	<i>The Security Council's many and varied sanctions régimes</i>	91
5.2.1	The Southern Rhodesia sanctions régime	92
5.2.2	The South Africa sanctions régime.....	93
5.2.3	The Iraq sanctions régime.....	94
5.2.4	The former Yugoslavia sanctions régime	95
5.2.5	The Somalia sanctions régime.....	96
5.2.6	The Libya sanctions régime.....	96
5.2.7	The sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro)	97
5.2.8	The first Liberia sanctions régime.....	99
5.2.9	The sanctions régime against the Bosnian Serbs.....	99
5.2.10	The Haiti sanctions régime	100
5.2.11	The UNITA sanctions régime	101
5.2.12	The Rwanda sanctions régime	102
5.2.13	The Sudan sanctions régime.....	103
5.2.14	The Sierra Leone sanctions régime.....	104
5.2.15	The Federal Republic of Yugoslavia sanctions régime.....	105
5.2.16	The Afghanistan/Taliban/Al Qaida sanctions régime.....	105
5.2.17	The sanctions régime against Ethiopia and Eritrea	107
5.2.18	The second Liberia sanctions régime	107
5.2.19	The sanctions régime against certain actors in the Democratic Republic of the Congo (DRC).....	108
5.2.20	The third Liberia sanctions régime.....	109
6.	ESTABLISHING THE LEGAL BASIS FOR SANCTIONS: IDENTIFYING THREATS, INVOKING CHAPTER VII, AND SETTING OBJECTIVES.....	111
6.1	<i>Determining the existence of a threat to the peace, breach of the peace or act of aggression</i>	111
6.1.1	The question of whether the Council must make a determination of a threat to the peace, breach of the peace, or act of aggression prior to imposing sanctions.....	112
6.1.2	Threats to the peace	115
i.	Threats with a clear international dimension.....	116
(a)	States with an aggressive history and the potential to possess or produce weapons of mass destruction: the cases of South Africa and Iraq.....	117
(b)	International Terrorism: the cases of Libya, Sudan and the Taliban & Al Qaida.....	118
(c)	International conflict: the case of Ethiopia and Eritrea.....	121
(d)	Interference: the cases of the Federal Republic of Yugoslavia (Serbia-Montenegro) and Liberia.....	122
ii.	Threats arising from internal crisis	124
(a)	The denial of the right to self-determination by a racist minority régime: the case of Southern Rhodesia	125

	(b) Apartheid: the case of South Africa.....	127
	(c) General civil war: the cases of the former Yugoslavia, Somalia, Liberia and Rwanda.....	130
	(d) Seizure of power from a democratically-elected Government: the cases of Haiti and Sierra Leone.....	132
	(e) The use or threat of military force by rebel groups against a Government: the cases of the Bosnian Serbs, Angola (UNITA), Sierra Leone and the DRC.....	134
	(f) Serious humanitarian crises	137
	(g) The violation by a Government of a minority's fundamental rights (including the right to self-determination): the case of Kosovo	139
6.1.3	Breaches of the peace.....	141
6.1.4	Acts of aggression.....	141
6.2	<i>Invoking Article 41 and Chapter VII of the Charter</i>	145
6.3	<i>Outlining the objectives of sanctions.....</i>	146
6.3.1	Ending a rebellion, invasion or external interference	148
6.3.2	Restoring a legitimate and/or democratically-elected Government to power.....	149
6.3.3	Facilitating the exercise or protection of human rights	151
6.3.4	Bringing about disarmament or arms control	153
6.3.5	Facilitating the establishment and consolidation of peace	154
6.3.6	Addressing international terrorism.....	158
7.	DELINEATING THE SCOPE OF U.N. SANCTIONS.....	161
7.1	<i>Economic and financial sanctions.....</i>	163
7.1.1	Comprehensive economic sanctions	164
	i. Humanitarian exemptions from comprehensive sanctions.....	165
	ii. Other exemptions from comprehensive sanctions.....	168
7.1.2	Particular economic sanctions.....	170
	i. Arms sanctions	170
	ii. Sanctions against weapons of mass destruction	177
	iii. Petroleum sanctions.....	178
	iv. Asbestos, iron ore, sugar and leather sanctions	180
	v. Sanctions against trade in forms of transport: aircraft, vehicle and watercraft sanctions	180
	vi. Diamond sanctions.....	181
	vii. Chemical sanctions.....	182
	viii. Timber sanctions.....	182
7.1.3	Financial sanctions.....	183
7.2	<i>Non-economic sanctions.....</i>	187
7.2.1	Diplomatic and representative sanctions	188
7.2.2	Transportation sanctions	189
7.2.3	Travel sanctions	191
7.2.4	Aviation sanctions	194
7.2.5	Sporting, cultural and scientific sanctions.....	197
7.2.6	Telecommunications sanctions	197
8.	FINE-TUNING SANCTIONS: CLARIFYING SENDERS AND TARGETS, DEFINING TEMPORAL APPLICATION AND ADDRESSING UNINTENDED CONSEQUENCES.....	199
8.1	<i>Identifying the actors who must apply sanctions.....</i>	199
8.2	<i>Identifying sanctions targets and targeting decision-makers.....</i>	199

8.2.1	Identifying the target(s) against which sanctions are to be applied: the diverse range of targets.....	200
i.	Single State targets.....	200
ii.	Multiple States targets.....	200
iii.	De facto State targets.....	201
iv.	Failed State targets.....	202
v.	Sub-State targets.....	202
vi.	Extra-State targets.....	203
8.2.2	Targeting decision-makers.....	204
8.3	<i>Defining the temporal application of sanctions.....</i>	205
8.3.1	Time-delays.....	206
8.3.2	Time-limits.....	208
8.4	<i>Addressing the unintended consequences of sanctions.....</i>	210
8.4.1	Security Council action to address the humanitarian impact of sanctions upon civilian populations.....	210
i.	The exemptions process.....	211
ii.	Smart sanctions.....	213
iii.	Humanitarian impact assessment.....	213
8.4.2	Security Council action to address the impact of sanctions upon third States.....	214
9.	BESTOWING RESPONSIBILITY UPON SUBSIDIARY BODIES FOR SANCTIONS ADMINISTRATION AND MONITORING.....	219
9.1	<i>Sanctions Committees.....</i>	220
9.1.1	Composition.....	221
9.1.2	Mandates.....	222
i.	Reporting activities.....	223
ii.	The administration of exemptions.....	224
iii.	Considering requests for special assistance under Article 50 of the Charter.....	226
iv.	Sanctions Monitoring.....	227
v.	Improving sanctions implementation.....	229
vi.	Liaising with other subsidiary organs.....	231
vii.	Refining working methods.....	232
viii.	Administering lists for targeted sanctions.....	234
ix.	Considering the humanitarian impact of sanctions.....	235
9.1.3	Working methods.....	235
9.2	<i>The Security Council Working Group on Sanctions.....</i>	237
9.3	<i>Disarmament Commissions and Commissions of Inquiry.....</i>	237
9.3.1	The Iraq Commissions: UNCC, UNSCOM, UNMOVIC.....	238
9.3.2	The International Commission of Inquiry on Rwanda.....	242
9.4	<i>Bodies of Experts: Groups, Committees, Teams and Panels of Experts.....</i>	245
9.4.1	The group of experts on the Iraq Sanctions Régime.....	246
9.4.2	Ad Hoc Panels on the Iraq Sanctions Régime.....	247
9.4.3	The Panel of Experts on UNITA sanctions.....	248
9.4.4	The Panel of Experts on the Sierra Leone sanctions régime.....	250
9.4.5	The Afghanistan/Taliban/Al Qaida Committee of Experts.....	251
9.4.6	The Liberia II Panel of Experts.....	252
9.4.7	The Team and Panel of Experts on Somalia.....	255

9.4.8	The Liberia III Panel of Experts.....	258
9.4.9	The DRC Group of Experts	259
9.5	<i>Monitoring Mechanisms</i>	260
9.5.1	The Iraq Export/Import Monitoring Mechanism	260
9.5.2	The UNITA Monitoring Mechanism.....	262
9.5.3	The Taliban & Al Qaida Monitoring Mechanism.....	264
9.5.4	The Somalia Monitoring Group.....	267
9.5.5	The Analytical Support and Sanctions Monitoring Team ("the 1526 Monitoring Team").....	268
9.6	<i>United Nations Operations</i>	269
9.7	<i>Security Council missions</i>	271
10.	BESTOWING RESPONSIBILITY UPON OTHER INTERNATIONAL ACTORS FOR SANCTIONS MONITORING AND ENFORCEMENT	273
10.1	<i>The U.N. Secretary-General</i>	273
10.1.1	Administration and Coordination	273
i.	Providing administrative support	273
ii.	Establishing new subsidiary bodies or programmes	276
iii.	Coordinating role.....	277
10.1.2	Planning.....	278
10.1.3	Monitoring and Evaluation	279
10.1.4	Implementation.....	286
10.2	<i>States</i>	288
10.2.1	States in general.....	289
10.2.2	Particular types of States.....	302
i.	States Members of the United Nations	303
ii.	States non-members of the United Nations.....	305
iii.	An administering Power.....	306
iv.	States neighbouring or in the same region as the target	307
v.	Legitimate Governments in whose territories a target is located	310
vi.	States alleged to have been violating sanctions	311
vii.	States playing a role connected with the objectives of a sanctions régime	311
viii.	States engaging in relations that are exempt from sanctions	312
ix.	States engaging in a particular type of trade activity.....	312
10.2.3	Regional organizations	313
PART IV:	STRENGTHENING THE RULE OF LAW: A CONSTRUCTIVE CRITIQUE OF U.N. SANCTIONS.....	319
11.	STRENGTHENING THE RULE OF LAW OR SERVING AS A TOOL OF WAR? A CRITICAL ANALYSIS OF U.N. SANCTIONS.....	321
11.1	<i>Behind closed doors: U.N. sanctions and the problem of transparency.....</i>	<i>321</i>
11.1.1	Transparency in the Security Council's decision-making process	322
11.1.2	Transparency in Security Council decisions.....	327
i.	Transparency and the determination of threats to the peace.....	327
ii.	Transparency and invoking the Charter basis for applying sanctions.....	335
iii.	Transparency and the articulation of sanctions objectives	336
(a)	Establishing peace and stability.....	337

	(b) Securing the future and ongoing verification of disarmament	338
	(c) Ensuring that a target stops supporting terrorism.....	339
11.1.3	Transparency in the Sanctions Committees	345
11.1.4	Recommendations for improving transparency	349
11.2	<i>A less than constant practice: U.N. sanctions and the problem of consistency.....</i>	351
11.2.1	Consistency and the objectives of sanctions régimes	353
11.2.2	Consistency and the scope of sanctions.....	354
11.2.3	Consistency and the Security Council's use of subsidiary bodies	359
i.	The establishment of Sanctions Committees.....	359
ii.	Commissions of Inquiry, Bodies of Experts and Monitoring Mechanisms	360
11.2.4	Recommendations for improving consistency	361
11.3	<i>First among equals: U.N. sanctions, the veto and the problem of equality.....</i>	363
11.3.1	Equality as equal treatment	364
11.3.2	Equality as equal representation.....	366
11.3.3	Recommendations for Improving Equality.....	371
11.4	<i>Guilty until proven innocent? U.N. sanctions and the problem of due process</i>	373
11.4.1	Due process and States targets.....	374
11.4.2	Due process and non-State targets	375
11.4.3	Due process and individuals	376
11.4.4	Recommendations for strengthening due process.....	381
11.5	<i>A disproportionate burden: the unintended consequences of U.N. sanctions upon innocent civilian populations and third States.....</i>	383
11.5.1	Proportionality and civilian populations: minimising the humanitarian impact of sanctions	385
11.5.2	Proportionality and third States: minimising the impact of sanctions upon third States.....	390
11.5.3	Recommendations for ensuring greater proportionality in the use of sanctions	391
12.	CONCLUDING REMARKS AND SUMMARY OF PRACTICAL RECOMMENDATIONS.....	395
12.1	<i>Increasing transparency.....</i>	396
12.2	<i>Improving consistency.....</i>	396
12.3	<i>Promoting equality.....</i>	397
12.4	<i>Providing due process</i>	397
12.5.	<i>Ensuring proportionality.....</i>	397
TABLES	399
A.	PROVISIONS ESTABLISHING AND TERMINATING U.N. SANCTIONS RÉGIMES.....	400
B.	PROVISIONS CITING CHAPTER VII OF THE U.N. CHARTER AS THE BASIS FOR SANCTIONS-RELATED ACTION	401
C.	PROVISIONS OUTLINING THE SCOPE OF SANCTIONS	403
D.	PROVISIONS OUTLINING SANCTIONS COMMITTEE MANDATES	405
E.	SANCTIONS COMMITTEE ANNUAL REPORTS.....	409
F.	PROVISIONS OUTLINING EXPERT BODY MANDATES.....	413

G.	REPORTS BY EXPERT BODIES.....	415
H.	PROVISIONS OUTLINING MONITORING BODY MANDATES.....	417
I.	REPORTS BY MONITORING BODIES.....	419
APPENDICES.....		421
1.	THE SOUTHERN RHODESIA SANCTIONS RÉGIME	423
1.1	<i>The constitutional basis for imposing sanctions against Southern Rhodesia</i>	<i>423</i>
1.2	<i>The objective of the Southern Rhodesia sanctions régime</i>	<i>425</i>
1.3	<i>The scope of the Southern Rhodesia sanctions régime</i>	<i>426</i>
1.4	<i>The administration, monitoring and enforcement of the Southern Rhodesia sanctions régime</i>	<i>428</i>
1.4.1	The role of the Secretary-General.....	428
1.4.2	The Southern Rhodesia Sanctions Committee.....	429
1.4.3	States.....	432
1.5	<i>Termination of the Southern Rhodesia sanctions régime.....</i>	<i>437</i>
1.6	<i>Notable aspects of the Southern Rhodesia sanctions régime</i>	<i>438</i>
2.	THE SOUTH AFRICA SANCTIONS RÉGIME	443
2.1	<i>The constitutional basis for imposing sanctions against South Africa</i>	<i>443</i>
2.2	<i>The objective of the South Africa sanctions régime</i>	<i>446</i>
2.3	<i>The scope of the South Africa sanctions régime</i>	<i>446</i>
2.4	<i>The administration, monitoring and enforcement of the South Africa sanctions régime</i>	<i>449</i>
2.4.1	The Role of the Secretary-General.....	449
2.4.2	The South Africa Sanctions Committee.....	450
2.4.3	States.....	451
2.5	<i>Termination of the South Africa sanctions régime.....</i>	<i>452</i>
2.6	<i>Notable aspects of the South Africa sanctions régime</i>	<i>453</i>
3.	THE IRAQ SANCTIONS RÉGIME	455
3.1	<i>The constitutional basis for imposing sanctions against Iraq</i>	<i>456</i>
3.2	<i>The objectives of the Iraq sanctions régime</i>	<i>458</i>
3.3	<i>The scope of the Iraq sanctions régime</i>	<i>460</i>
3.4	<i>The administration, monitoring and enforcement of the Iraq sanctions régime</i>	<i>468</i>
3.4.1	The Iraq Sanctions Committees	469
i.	The 661 Committee	469
ii.	The 1518 Committee	476
3.4.2	Actors involved in the implementation and administration of disarmament objectives: the International Atomic Energy Agency (IAEA), the United Nations Special Commission (UNSCOM) and the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC).....	477
3.4.3	The Oil-for-Food Programme (OFFP) and the Office of the Iraq Programme (OIP).....	480

3.4.4	The Iraq export/import monitoring mechanism.....	480
3.4.5	The group of experts on the Iraq Sanctions Régime.....	482
3.4.6	Ad Hoc Panels on the Iraq Sanctions Régime.....	483
3.4.7	The role of the Secretary-General.....	484
i.	Reporting.....	484
ii.	Planning.....	486
iii.	Establishing new subsidiary bodies or programmes.....	486
iv.	Submitting recommendations for improving implementation and monitoring.....	487
v.	Taking action to improve implementation and monitoring.....	488
vi.	Providing administrative assistance and support	490
5.4.8	States	490
5.4.9	International organizations	496
3.5	<i>Notable aspects of the Iraq sanctions régime</i>	497
4.	THE FORMER YUGOSLAVIA SANCTIONS RÉGIME.....	499
4.1	<i>The constitutional basis for imposing sanctions against the former Yugoslavia</i>	500
4.2	<i>The objective of the former Yugoslavia sanctions régime</i>	501
4.3	<i>The scope of the former Yugoslavia sanctions régime</i>	501
4.4	<i>The administration, monitoring and enforcement of the former Yugoslavia sanctions régime</i>	502
4.4.1	The former Yugoslavia Sanctions Committee.....	503
4.4.2	The Secretary-General.....	505
4.4.3	States	506
i.	States in general	506
ii.	Riparian and Neighbour States	508
4.4.4	Regional organizations and other regional entities involved in the implementation, monitoring and enforcement of the sanctions	509
4.5	<i>Termination of the former Yugoslavia sanctions régime</i>	511
4.6	<i>Notable aspects of the former Yugoslavia sanctions régime</i>	511
5.	THE SOMALIA SANCTIONS RÉGIME.....	515
5.1	<i>The constitutional basis for imposing sanctions against Somalia</i>	515
5.2	<i>The objective of the Somalia sanctions régime</i>	516
5.3	<i>The scope of the Somalia sanctions régime</i>	517
5.4	<i>The administration, monitoring and enforcement of the Somalia sanctions régime</i>	518
5.4.1	The Somalia Sanctions Committee	518
5.4.2	The Secretary-General.....	521
5.4.3	States	522
5.4.4	Regional organizations.....	524
5.4.5	The United Nations Operations in Somalia (UNOSOM and UNOSOM II).....	524
5.4.6	The Team and Panel of Experts on Somalia	526
5.4.7	The Somalia Monitoring Group	530
5.5	<i>Notable aspects of the Somalia sanctions régime</i>	531
6.	THE LIBYA SANCTIONS RÉGIME.....	533

6.1	<i>The constitutional basis for imposing sanctions against Libya</i>	534
6.2	<i>The objective of the Libya sanctions régime</i>	535
6.3	<i>The scope of the Libya sanctions régime</i>	536
6.4	<i>The administration, monitoring and enforcement of the Libya sanctions régime</i>	539
6.4.1	The Libya Sanctions Committee.....	539
6.4.2	The Secretary-General	542
6.4.3	States.....	544
6.5	<i>Suspension and termination of the Libya sanctions régime</i>	545
6.6	<i>Notable aspects of the Libya sanctions régime</i>	547
7.	THE SANCTIONS RÉGIME AGAINST THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO).....	551
7.1	<i>The constitutional basis for imposing sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro)</i>	551
7.2	<i>The objective of the FRY sanctions régime</i>	553
7.3	<i>The scope of the FRY sanctions régime</i>	555
7.4	<i>The administration, monitoring and enforcement of the FRY sanctions régime</i>	560
7.4.1	The 724 Sanctions Committee.....	560
7.4.2	The Secretary-General	566
7.4.3	States.....	568
i.	States in general.....	568
ii.	Riparian and Neighbour States.....	570
iii.	International organizations.....	571
7.4.4	Regional organizations and other regional entities involved in the implementation and enforcement of the sanctions	572
7.5	<i>Suspension and Termination of the FRY sanctions régime</i>	575
7.6	<i>Notable aspects of the FRY sanctions régime</i>	577
8.	THE FIRST LIBERIA SANCTIONS RÉGIME ("LIBERIA I").....	581
8.1	<i>The constitutional basis for imposing sanctions against Liberia</i>	581
8.2	<i>The objective of the Liberia sanctions régime</i>	582
8.3	<i>The scope of the Liberia sanctions régime</i>	582
8.4	<i>The administration, monitoring and enforcement of the Liberia sanctions régime</i>	583
8.4.1	Regional organizations	583
8.4.2	The United Nations Observer Mission in Liberia (UNOMIL).....	584
8.4.3	The Liberia Sanctions Committee.....	585
8.4.4	The Secretary-General	587
8.4.5	States.....	587
8.5	<i>Termination of the Liberia sanctions régime</i>	588
8.6	<i>Notable aspects of the Liberia sanctions régime</i>	589
9.	THE BOSNIAN SERB SANCTIONS RÉGIME.....	591
9.1	<i>The constitutional basis for imposing sanctions against the Bosnian Serb party</i>	591

9.2	<i>The objective of the Bosnian Serb sanctions régime</i>	592
9.3	<i>The scope of the Bosnian Serb sanctions régime</i>	592
9.4	<i>The administration, monitoring and enforcement of the Bosnian Serb sanctions régime</i>	595
9.4.1	The 724 Committee	595
9.4.2	The Secretary-General	597
9.4.3	States	597
i.	States in general	598
ii.	Riparian and Neighbour States	599
9.4.4	Regional organizations and other regional entities involved in the implementation and enforcement of the sanctions	600
9.5	<i>Suspension and termination of the Bosnian Serb sanctions régime</i>	603
9.6	<i>Notable aspects of the Bosnian Serb sanctions régime</i>	604
10.	THE HAITI SANCTIONS RÉGIME	607
10.1	<i>The constitutional basis for imposing sanctions against Haiti</i>	607
10.2	<i>The objective of the Haiti sanctions régime</i>	609
10.3	<i>The scope of the Haiti sanctions régime</i>	611
10.4	<i>The administration, monitoring and enforcement of the Haiti sanctions régime</i>	615
10.4.1	The Haiti Sanctions Committee	615
10.4.2	The Secretary-General	617
10.4.3	States	620
10.4.4	Regional and international organizations	623
10.5	<i>Termination of the Haiti sanctions régime</i>	624
10.6	<i>Notable aspects of the Haiti sanctions régime</i>	625
11.	THE UNITA SANCTIONS RÉGIME	627
11.1	<i>The constitutional basis for imposing sanctions against Angola/UNITA</i>	627
11.2	<i>The objectives of the UNITA sanctions régime</i>	629
11.3	<i>The scope of the UNITA sanctions régime</i>	631
11.4	<i>The administration, monitoring and enforcement of the UNITA sanctions régime</i>	633
11.4.1	The Secretary-General	634
11.4.2	The UNITA Sanctions Committee	637
11.4.3	States	642
11.4.4	Regional and international organizations	647
11.4.5	The Panel of Experts on UNITA sanctions	649
11.4.6	The Monitoring Mechanism on UNITA sanctions	650
11.5	<i>The Suspension and Termination of the UNITA sanctions régime</i>	652
11.6	<i>Notable aspects of the UNITA sanctions régime</i>	653
12.	THE RWANDA SANCTIONS RÉGIME	657
12.1	<i>The constitutional basis for imposing sanctions against Rwanda</i>	657
12.2	<i>The objectives of the Rwanda sanctions régime</i>	658

12.3	<i>The scope of the Rwanda sanctions régime</i>	658
12.4	<i>The administration, monitoring and enforcement of the Rwanda sanctions régime</i>	659
12.4.1	The Rwanda Sanctions Committee.....	660
12.4.2	The Secretary-General.....	662
12.4.3	The Commission of Inquiry on Rwanda (ICIR).....	664
12.4.4	States.....	671
12.5	<i>The suspension of aspects of the Rwanda sanctions régime</i>	674
12.6	<i>Notable aspects of the Rwanda sanctions régime</i>	674
13.	THE SANCTIONS RÉGIME AGAINST THE SUDAN.....	677
13.1	<i>The constitutional basis for imposing sanctions against the Sudan</i>	677
13.2	<i>The objectives of the Sudan sanctions régime</i>	678
13.3	<i>The scope of the Sudan sanctions régime</i>	679
13.4	<i>The administration, monitoring and enforcement of the Sudan sanctions régime</i>	680
13.4.1	Secretary-General.....	680
13.4.2	States.....	681
13.4.3	International organizations, regional organizations and specialized agencies.....	682
13.5	<i>Termination of the Sudan sanctions régime</i>	682
13.6	<i>Notable aspects of the Sudan sanctions régime</i>	683
14.	THE SIERRA LEONE SANCTIONS REGIME.....	685
14.1	<i>The constitutional basis for imposing sanctions against Sierra Leone</i>	685
14.2	<i>The objective of the Sierra Leone sanctions régime</i>	686
14.3	<i>The scope of the Sierra Leone sanctions régime</i>	687
14.4	<i>The administration, monitoring and enforcement of the Sierra Leone sanctions régime</i>	689
14.4.1	The Sierra Leone Sanctions Committee.....	690
14.4.2	The Secretary-General.....	696
14.4.3	States.....	698
14.4.4	Regional organizations.....	700
14.4.5	International organizations.....	700
14.4.6	The Panel of Experts on the Sierra Leone sanctions régime.....	701
14.5	<i>Termination of aspects of the Sierra Leone sanctions régime</i>	708
14.6	<i>Notable aspects of the Sierra Leone sanctions régime</i>	708
15.	THE SANCTIONS RÉGIME AGAINST THE FEDERAL REPUBLIC OF YUGOSLAVIA (THE “KOSOVO SANCTIONS RÉGIME”).....	711
15.1	<i>The constitutional basis for imposing sanctions against the Federal Republic of Yugoslavia to address the situation in Kosovo</i>	711
15.2	<i>The objective of the Kosovo sanctions régime</i>	713
15.3	<i>The scope of the Kosovo sanctions régime</i>	715
15.4	<i>The administration, monitoring and enforcement of the Kosovo sanctions régime</i>	715
15.4.1	The Kosovo Sanctions Committee.....	715

15.4.2	The Secretary-General.....	717
15.4.3	States	717
15.4.4	International and regional organizations	718
15.4.5	The United Nations Preventive Deployment Force (UNPREDEP).....	719
15.4.6	The Security Council mission to Kosovo.....	719
15.5	<i>Termination of the Kosovo sanctions régime</i>	720
15.6	<i>Notable aspects of the Kosovo sanctions régime</i>	721
16.	THE SANCTIONS RÉGIME AGAINST AFGHANISTAN/THE TALIBAN/AL QAIDA	723
16.1	<i>The constitutional basis for imposing sanctions against the Taliban/Al Qaida</i>	724
16.2	<i>The objectives of the Taliban/Al Qaida sanctions régime</i>	725
16.3	<i>The scope of the Taliban/Al Qaida sanctions régime</i>	726
16.4	<i>The administration, monitoring and enforcement of the Taliban/Al Qaida sanctions régime</i>	729
16.4.1	The Afghanistan/Taliban/Al Qaida Sanctions Committee	730
16.4.2	The Role of Secretary-General	735
16.4.3	States	739
16.4.4	The Afghanistan/Taliban/Al Qaida Committee of Experts.....	740
16.4.5	The Afghanistan/Taliban/Al Qaida Monitoring Group	742
16.4.6	The Analytical Support and Sanctions Monitoring Team (“the 1526 Monitoring Team”).....	749
16.5	<i>Notable aspects of the Taliban/Al Qaida sanctions régime</i>	749
17.	THE ETHIOPIA AND ERITREA SANCTIONS RÉGIME	755
17.1	<i>The constitutional basis for imposing sanctions against Ethiopia and Eritrea</i>	755
17.2	<i>The objective(s) of the Ethiopia/Eritrea sanctions régime</i>	757
17.3	<i>The scope of the Ethiopia/Eritrea sanctions régime</i>	757
17.4	<i>The administration, monitoring and enforcement of the Ethiopia/Eritrea sanctions régime</i>	758
17.4.1	The Secretary-General.....	758
17.4.2	The Ethiopia and Eritrea Sanctions Committee.....	759
17.4.3	States	760
17.4.4	International and regional organizations	761
17.5	<i>Termination of the Ethiopia/Eritrea sanctions régime</i>	761
17.6	<i>Notable aspects of the Ethiopia/Eritrea sanctions régime</i>	762
18.	THE SECOND LIBERIA SANCTIONS RÉGIME (“LIBERIA II”).....	763
18.1	<i>The constitutional basis for imposing a new sanctions régime against Liberia</i>	763
18.2	<i>The objective of the Liberia II sanctions régime</i>	765
18.3	<i>The scope of the Liberia II sanctions régime</i>	767
18.4	<i>The administration, monitoring and enforcement of the Liberia II sanctions régime</i> ...	769
18.4.1	The 1343/Liberia II Committee	769
18.4.2	The Secretary-General.....	773
18.4.3	States	775

i.	States in general.....	775
ii.	Regional States	777
18.4.4	International organizations.....	779
18.4.5	The Liberia II Panel of Experts.....	780
18.5	<i>Termination of the Liberia II sanctions régime</i>	794
18.6	<i>Notable aspects of the Liberia II sanctions régime</i>	795
19.	THE SANCTIONS RÉGIME AGAINST CERTAIN ACTORS IN THE DEMOCRATIC REPUBLIC OF THE CONGO.....	799
19.1	<i>The constitutional basis for imposing the DRC sanctions régime</i>	799
19.2	<i>The objectives of the DRC sanctions régime</i>	800
19.3	<i>The scope of the DRC sanctions régime</i>	800
19.4	<i>The administration, monitoring and enforcement of the DRC sanctions régime</i>	801
19.4.1	The Secretary-General	801
19.4.2	The United Nations Organization Mission in the DRC (MONUC).....	801
19.4.3	The DRC Sanctions Committee.....	802
19.4.4	The DRC Group of Experts	802
19.4.5	States.....	803
19.5	<i>Notable aspects of the DRC sanctions régime</i>	804
20.	THE THIRD LIBERIA SANCTIONS RÉGIME (“LIBERIA III”).....	805
20.1	<i>The constitutional basis for imposing the Liberia III sanctions régime</i>	805
20.2	<i>The objectives of the Liberia III sanctions régime</i>	807
20.3	<i>The scope of the Liberia III sanctions régime</i>	807
20.4	<i>The administration, monitoring and enforcement of the Liberia III sanctions régime</i> ..	809
20.4.1	The 1521/Liberia III Committee	809
20.4.2	The Secretary-General	810
20.4.3	States.....	811
20.4.4	The Liberia III Panel of Experts.....	812
20.4.5	United Nations operations.....	814
20.5	<i>Notable aspects of the Liberia III sanctions régime</i>	815
	BIBLIOGRAPHY	817

**Strengthening the Rule of Law or Serving as a Tool of War?
A Critical Analysis of the United Nations Sanctions System**

By Jeremy Matam Farrall

"[W]e are ushering in an epoch of law among peoples and of justice among nations. The Security Council's task is a heavy one, but it will be sustained by our hope, which is shared by the people, and by our remembrance of the sufferings of all those who fought and died that the rule of law might prevail."

- French Ambassador Vincent Auriol, at the inaugural meeting of the U.N. Security Council

17 January 1946

"We meet at the hinge of history. We can use the end of the cold war to get beyond the whole pattern of settling conflicts by force, or we can slip back into ever more savage regional conflicts in which might alone makes right. We can take the high road towards peace and the rule of law, or we can take Saddam Hussein's path of brutal aggression and the law of the jungle."

- U.S. Secretary of State James Baker, when the Council authorized the use of force against Iraq

29 November 1990

"This Council has a very heavy responsibility to promote justice and the rule of law in its efforts to maintain international peace and security."

- U.N. Secretary-General Kofi Annan, at the Council's meeting on "Justice and the rule of law"

24 September 2003

PART I. SETTING THE STAGE FOR ANALYSIS

Part I lays the groundwork for subsequent analysis. Chapter 1 provides the overall context for discussion, introducing U.N. sanctions and explaining the central thesis and key objectives of this project. It also provides an overview of the research methodology employed and outlines the path ahead. Chapter 2 builds upon this introduction by outlining a theoretical framework for exploring the relationship between sanctions and the rule of law.

1. Introducing U.N. sanctions and the path ahead

Conflict has posed a threat to human societies throughout history. The degree to which a society is peaceful depends upon the extent to which that society can control conflict. The ability of a particular society to control conflict is generally contingent upon the existence of norms of behaviour which restrict the resort to force and of an authoritative means for ensuring that those norms are observed.¹ Prior to the twentieth century the “society” of nations had developed neither the norms of behaviour nor the authoritative enforcement mechanisms necessary to control international conflict.² In the twentieth century there were two major attempts to create a system to regulate international conflict. The first occurred subsequent to the First World War, taking the form of the League of Nations. The second occurred subsequent to the Second World War, leading to the establishment of the United Nations. The creators of both the League of Nations and the United Nations articulated norms of state behaviour which sought to control the resort to force as a means of resolving conflict, and they established forms of “sanctions” to be employed against members of the society of nations whose behaviour violated those norms. The League of

¹ The notion that the ability of society to regulate conflict depends upon the existence or threat of state-sanctioned coercion underpins the writings of a multitude of political philosophers and legal theorists, including Locke, J.S. Mill, Machiavelli, Marx, Austin, Bentham, Kelsen, Hart and Dworkin, to name but a few.

² Pre-twentieth century international law had developed norms relating to international relations in times of peace, and in times of war, but it did not seek to prohibit the resort to force as a means of resolving disputes: see Kelsen, Hans, *The Law of the United Nations: a Critical Analysis of its Fundamental Problems* (1951) Steven & Sons, London, 732; Crawford, James, ‘Democracy and the Body of International Law’ in Fox, Gregory H., & Roth, Brad R., *Democratic Governance and International Law* (2000) Cambridge UP, Cambridge, UK, 91-122, 98 (“Before 1928, or perhaps 1945, international law made no attempt to outlaw war, which was, as Lord McNair said in his inaugural lecture, ‘extra-legal rather than illegal’.”). This was despite the fact that many thinkers, such as St. Augustine, Thomas Aquinas, Vattel and Grotius, had emphasised the need for, and articulated the potential content of, such conflict-restricting norms much earlier than the twentieth century.

Nations collective security experiment ultimately proved a failure. Although the United Nations experiment has not been a stunning success, it has nevertheless proven more durable than its predecessor.

This thesis explores the role performed by United Nations sanctions in controlling international conflict.³ In the first forty-five years following the creation of the United Nations the Cold War prevented the Organisation's collective security system from functioning as its creators had envisaged. During that period the U.N. Security Council, shackled by the Cold War use and threat of the permanent member power of veto, imposed mandatory sanctions on only two occasions, against Southern Rhodesia and South Africa. By contrast, the post-Cold War period has witnessed a dramatic increase in the use of U.N. sanctions. Since August 1990 the U.N. Security Council has initiated no fewer than eighteen mandatory sanctions regimes.⁴ U.N. sanctions now form a prominent feature of the landscape of international relations.

While the end of Cold War tensions created the preconditions in which a sanctions renaissance became possible, two further factors have contributed to the rise in sanctions incidence. First, sanctions can often represent the most palatable of the coercive alternatives available to the Security Council when faced with the task of taking action to maintain or

³ As noted below in section 1.2, unless otherwise qualified the phrase "U.N. sanctions" is used in this thesis to refer to mandatory sanctions that are applied against particular State or non-State actors by the U.N. Security Council under Article 41 of the U.N. Charter.

⁴ Those eighteen sanctions régimes have been applied against Iraq, the former Yugoslavia (all states that were a part of the former Yugoslavia), Somalia, Libya, the Federal Republic of Yugoslavia (Serbia-Montenegro) to address the situation in Bosnia-Herzegovina, Liberia, the Bosnian Serbs, Haiti, Angola (UNITA), Rwanda, the Sudan, Sierra Leone, the Federal Republic of Yugoslavia to address the situation in Kosovo, Afghanistan, Eritrea and Ethiopia, Liberia (for a second time), certain actors in the Democratic Republic of the Congo, and Liberia (for a third time). For an overview of each of the U.N. sanctions régimes created to date, as well as references to the key Security Council resolutions establishing and modifying those régimes,

restore international peace and security. From a political perspective, it can be extremely difficult to garner the support necessary to employ collective military sanctions, as the governments which would be expected to shoulder the burden of collective forceful action are reluctant to assume responsibility for the serious financial, political, and humanitarian consequences that are likely to flow from the use of military sanctions. The imposition of sanctions is generally thought to entail fewer costs than the use of force. By authorising sanctions the Security Council can be seen to be taking strong symbolic action against threats to international peace and security, without having to assume the responsibility for, nor incur the costs of, using force. Second, there is the perception that the potential of sanctions to achieve their policy objectives has increased with advances in international technology, communications, and trade. Globalisation has fostered a climate of growing interdependence, in which states are increasingly reliant upon trade and communication links with the international community. In such an interdependent economic environment, a stringent U.N. sanctions regime has the power to devastate a target economy.

But despite the political appeal of sanctions and their apparent potential to provide an effective, non-forcible resolution to major international crises, they have attracted many critics. At one end of the spectrum, some policy analysts criticise sanctions for being either ineffective or for taking too long to have an effect.⁵ A further criticism is that sanctions can have the unintended consequence of galvanising opposition to U.N. intervention and thus

see Chapter 5, below. For more extensive summaries of the Council's actions shaping the contours of each régime, see the Appendices.

⁵ See, e.g., Pape, Robert A., 'Why Economic Sanctions Do Not Work' (1997) 22 *International Security* 90-136.

strengthening the target government's position of power.⁶ At the other end of the spectrum, sanctions are criticised due to the devastating impact they can have on the civilian populations of target states. International aid workers have expressed concern over the manner in which U.N. sanctions cripple economic and social infrastructure, slow the flow of crucial humanitarian supplies, and impair the target population's enjoyment of human rights. Non-military sanctions have thus been referred to as 'a silent holocaust,'⁷ as 'the U.N.'s weapon of mass destruction,'⁸ and as 'modern siege warfare.'⁹ Yet another group of critics, representing business, claims that the imposition of sanctions can rebound, boomerang style, and harm businesses who usually engage in trade with sanctioned nations, whereas maintaining trade provides the opportunity for constructive engagement with "recalcitrant" nations.¹⁰ Thus, although sanctions critics may pursue a range of agendas, they often share scepticism regarding the extent to which sanctions have made a meaningful contribution to efforts to restrict international conflict.

⁶ Galtung, Johan, 'On the Effects of Economic Sanctions: With Examples from the Case of Rhodesia' in Nincic, Miroslav & Wallenstein, Peter, *Dilemmas of Economic Coercion* (1983) Prager, New York, 17-60, 46.

⁷ Arbuthnot, Felicity, 'Dying of shame' 298 *New Internationalist* (January/February 1998). This article can be found on-line at: <http://www.newint.org/issue298/iraq.html> (last visited 20 July 2004).

⁸ See, e.g., Normand, Roger, 'Sanctions against Iraq: new weapon of mass destruction' (1998) 64 *Covert Action* 4-10; Halliday, Denis J., 'Iraq and the U.N.'s weapon of mass destruction' (1999) 98 *Current History* 65-8; Mueller, John & Mueller, Karl, 'Sanctions of mass destruction' (1999) *Foreign Affairs*, v. 78, n.3, 43-53.

⁹ Gordon, Joy, 'Sanctions as siege warfare' *The Nation*, March 22 1999. This article can be found on-line at: <http://www.globalpolicy.org/security/sanction/iraq1/iraq12.htm> (last visited 10 July 2004).

¹⁰ See, e.g., the literature posted on-line by the organisation USA*ENGAGE:<<http://www.usaengage.org/>>. See also, the results of an opinion poll taken on public perceptions of Americans relating to the American unilateral sanctions regime against Cuba: Crosette, Barbara, 'Americans of Two Minds on Sanctions, a Poll Finds' *The New York Times*, April 23, 2000, Section 1, column 7.

1.1 Central thesis and key objectives

The central contention of this thesis is that sanctions have been applied in such a way that they have undermined the rule of law, thus weakening the authority, credibility and legitimacy of the Security Council and its sanctions tool. As a consequence, States are less likely to have full confidence in the U.N. sanctions system and thus to comply fully with their sanctions obligations. The end result is that sanctions are less effective than they could be. Until the Security Council's sanctions practice can be reformed or modified, so that there is widespread confidence in the legitimacy of the U.N. sanctions system, the Security Council's sanctions instrument is unlikely to serve as an effective tool for resolving international conflict. Without such reform, the U.N. sanctions system will likely remain a destabilising influence upon, rather than a symbol of, the rule of law in international society.

The challenge is therefore how to modify the application of sanctions so that the Security Council in general, and the U.N. sanctions system in particular, command such respect and inspire such confidence that States both desire and feel compelled to comply with sanctions régimes and thus implement sanctions in practice. It is argued here that the path to securing such compliance lies in strengthening the rule of law. Thus the Security Council can induce greater compliance with its sanctions régimes by endeavouring to ensure that its sanctions practice reinforces, rather than undermines, the rule of law.

The major objectives of this thesis are:

- (i) To trace the evolution of the U.N. sanctions system;
- (ii) To demonstrate how the Security Council's sanctions practice has undermined the rule of law; and
- (iii) To explore how the Council's sanctions practice might be reformed so that sanctions ultimately reinforce the rule of law.

1.2 Setting the scope of analysis: defining U.N. sanctions

The term “sanctions” can have many meanings. In the national sphere “sanctions” generally represent a range of action that can be taken against a person who has transgressed a legal norm.¹¹ Thus a person who has committed the crime of manslaughter might receive the “sanction” of a term in prison. The nature, scope and length of potential national sanctions are generally determined by legislatures. The sanctions are then applied to concrete cases by judiciaries or juries, and they are then enforced by police forces and penal systems. National sanctions may serve a number of purposes, including defining the limits of permissible behaviour, punishing wrongdoers, and deterring potential future wrongdoers.¹² But whatever specific purpose a particular sanction may serve, the essence of national sanctions lies in their nexus with legal norms. This nexus separates “sanctions” from simple acts of coercion. In the national context, “sanctions” are imposed in order to enforce the law and they therefore aim to reinforce the rule of law.

In the international sphere, however, the term “sanctions” is commonly used to describe actions that often bear only a slight resemblance to their domestic relative. Media commentators, diplomats and scholars often employ the term to refer to a wide array of actions, taken for a variety of purposes, by a variety of actors (the “sender(s)”) against a variety of actors (the “target(s)”).¹³ The range of action commonly referred to as “sanctions” includes military and non-military action. The term “sanctions” can be used to describe action which aims to place physical restrictions upon the ability of a target to

¹¹ Kelsen, *The Law of the United Nations*, above note 2, 706.

¹² Doxey, Margaret P., *International Sanctions in Contemporary Perspective* (2nd ed. 1996) St. Martin's Press, NY, 7.

engage in the use of force itself, or to depict action which seeks to restrict the target's freedom in other respects, such as in relations of an economic, financial, diplomatic or representative, sporting or cultural nature.

The fundamental difference between the meaning of "sanctions" in the national context and the popular understanding of "sanctions" in the international context is that the action commonly referred to as "sanctions" in the international sphere does not necessarily serve the purpose of enforcing a legal norm.¹⁴ The term "sanctions" is widely used to refer to action which seeks either to coerce the target into behaving in a particular manner, or to punish it for behaviour considered unacceptable by the sender. The motive for imposing "sanctions" may be to respond to a breach of a norm or to prevent such a breach, but it may also be to pursue a foreign policy agenda or to gain some advantage over the target.¹⁵ Some commentators have even employed the term "positive sanctions" to refer to acts of a non-coercive nature which seek to induce a particular type of behaviour.¹⁶

¹³ Galtung and Doxey both provide useful summaries of the different types of international "sanctions": Galtung, 'On the Effects of Economic Sanctions', above note 6, 21; Doxey, *International Sanctions in Contemporary Perspective*, *ibid*, 15.

¹⁴ This can also be the case with U.N. sanctions, as it is not a requirement that they be applied in response to a violation of Charter obligations. Thus they can be interpreted as "political measures" which the Security Council has the "discretion" to apply in order to maintain or restore international peace and security. See: Kelsen, *The Law of the United Nations*, above note 2, 733.

¹⁵ The US "sanctions" regime against Cuba is one example of a "sanctions" regime imposed in pursuit of a foreign policy agenda. Since it first adopted a resolution on the subject in 1992, the UN's General Assembly has condemned on an annual basis the continued application of US "sanctions" against Cuba. For the initial resolution, see: A/RES/47/19 (24 November 1992). For the most recent resolution, see: A/RES/58/7 (18 November 2003). For the annual resolutions in between, see: A/RES/58/7 (18 November 2003), preambular paragraph 6.

¹⁶ The discussion concerning negative and positive sanctions has been described as the "carrots and sticks" approach to economic sanctions: see Schrijver, Nico, 'The Use of Economic Sanctions by the United Nations Security Council: an International Law Perspective' in Post, Harry H.G., *International Economic Law and Armed Conflict* (1994) Martinus Nijhoff, Dordrecht, 123-62; Cortright, David and Lopez, George A., 'Carrots, sticks, and cooperation: economic tools of statecraft', paper presented at the third annual conference on preventive action, sponsored by the Council on Foreign Relations, New York, December 12, 1996 (on file with author). This approach draws an analogy between the sender's relationship with the

The range of actors who impose sanctions on an international basis includes individual states, groups of states, the international community as a whole, and non-state actors. When one state initiates coercive action, its actions are commonly referred to as “unilateral sanctions”.¹⁷ When action is initiated by a group of states, the action becomes “multilateral” or “regional” “sanctions”.¹⁸ When action is taken by a majority of states, it is referred to as “collective” or “universal” sanctions.¹⁹ Finally, even coercive action which is

target and a farmer's relationship with a mule: sanctions can either be used as a stick, to punish the mule when it moves in the wrong direction, or as a carrot to induce it to move in the right direction. See, e.g., Bergeijk, Peter A.G. Van, *Economic Diplomacy, Trade and Commercial Policy: Positive and Negative Sanctions in a New World Order* (1994) Edward Elgar Publishing, Brookfield, VT, 19; Kuyper, P., ‘Trade Sanctions, Security, and Human Rights and Commercial Policy’ in Maresceau, M. (ed.), *The European Community's Commercial Policy after 1992: The Legal Dimension* (1993) Nijhoff, Dordrecht, 401-38; Cortright, David (ed.), *The Price of Peace: Incentives and International Conflict Prevention* (1997) Rowman & Littlefield, Lanham, MD; Amley, Edward A., Jr., ‘Peace by Other Means: using rewards in UN efforts to end conflicts’ (1998) *DJILP* 235-97. Reisman and Stevick draw a similar conceptual distinction between what they term “indulgent” and “deprivatory” techniques: Reisman, W. Michael & Stevick, Douglas L., ‘The Applicability of International Law Standards to United Nations Economic Sanctions Programmes’ (1998) 9 *EJIL* 86-141, 90.

¹⁷ Unilateral “sanctions” are those initiated by one state as part of its foreign policy. Examples of unilateral sanctions abound. For a comprehensive list of the unilateral sanctions imposed in the twentieth century, see: Hufbauer, Gary Clyde, Schott, Jeffrey J. & Elliott, Kimberly Ann, *Economic Sanctions Reconsidered* (2nd ed., 1990), Institute for International Economics, Washington DC. A prominent example of unilateral “sanctions” is the regime which has been maintained against Cuba by the USA since the Cuban missile crisis.

¹⁸ Examples of multilateral/regional “sanctions” regimes include those imposed against Haiti by the Organisation of American States and against the Former Yugoslavia by the European Union. For a detailed account of the Haiti sanctions see Gibbons, Elizabeth D., *Sanctions in Haiti: human rights and democracy under assault* (1999), especially chapter 3. For analysis of the EU sanctions regime against the Former Yugoslavia see: Chinkin, Christine, ‘The Legality of the Imposition of Sanctions by the European Union in International Law’ in Evans, Malcolm D. (ed), *Aspects of Statehood and Institutionalism in Contemporary Europe* (1997) Dartmouth, Brookfield, VT, 183-214; Puissochet, Jean-Pierre, ‘The Court of Justice and international action by the European Community: the example of the embargo against the Former Yugoslavia’ (1997) 20 *Fordham ILJ* 1557-76.

¹⁹ The terms collective or universal sanctions have been used to describe enforcement action mandated by the League of Nations or the United Nations. See, e.g.: Daoudi, M.S. & Dajani, M.S., *Economic Sanctions, ideals and experience* (1983) Routledge, London, 56-90 (chapter 2). The claim of UN sanctions to the title “universal” is strong, given that UN member states, which comprise 191 nations, are bound under articles 25 and 48 of the UN Charter to observe UN sanctions. Furthermore, a strong argument can be made that non-member states are also under a duty to observe UN sanctions. For further discussion of these issues see Chapter 4, section 4.2.

initiated by non-state actors is sometimes referred to as “sanctions”.²⁰ The range of actors who could potentially be the target of “sanctions” popularly understood generally mirrors the actors who can impose “sanctions”. In practice, forms of “sanctions” have been imposed against one state, a group of states, and extra-state entities.

In this study, however, unless otherwise qualified the term “U.N. sanctions” denotes binding, mandatory measures short of the use of force that are applied against particular State or non-State actors by the U.N. Security Council, in accordance with Article 41 of the U.N. Charter.²¹ As provided in Article 41, “U.N. sanctions” thus fall within the following description:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea,

²⁰ Non-state actors may be sub-state entities, such as secessionist self-determination movements, or they may comprise actors whose identity is not defined by a relationship to a particular state. Examples of extra-state entities may include international institutions such as the IMF, the World Bank or the WTO, and networks of individual citizens. In the East Timor crisis one of policy possibilities consistently mooted in the media as a means of influencing the Indonesian government to permit the deployment of a peace-keeping force was the imposition of economic sanctions by the World Bank or the International Monetary Fund. These “sanctions,” imposed by non-state entities, would have involved the withholding from Indonesian government of massive loans, upon which the Indonesian economy relied heavily. Another form of sanctioning which can occur outside the official state system is the establishment of citizens’ boycotts, of the type that was levelled against French products in Australia during the French nuclear testing in the Pacific. Civilian-initiated boycotts have been employed in many regions of the world, including India (a boycott of foreign goods was initiated in 1896), Turkey (a boycott of Austro-Hungarian goods was initiated in 1908 to protest annexation of Bosnia-Herzegovina), Egypt (a boycott of British goods was initiated in 1924), and China (eleven citizens’ boycotts were initiated, mostly against Japan, between 1905 and 1931). For further discussion of civilian boycotts, see: Lauterpacht, Hersch, ‘Boycott in International Relations’ (1933) 14 *British Yearbook of International Law* 125-40; Othman, Maged Taher, *Economic Sanctions in International Law: a legal study of the practice of the USA* (1982) University Microfilms International, Ann Arbor, MI, 19 - 25.

²¹ Like the general term “sanctions”, the term “U.N. sanctions” can also be used to refer to a variety of measures. Without further qualification, U.N. sanctions may denote: military or non-military action; action that is authorized by the Security Council or the General Assembly; and action that is requested and thus “voluntary” or action that is binding and thus “mandatory”.

air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.²²

As noted above, since the United Nations was born in 1945 the Security Council has acted upon its Article 41 sanctions powers to impose twenty U.N. sanctions régimes.²³ In addition to its actions establishing and modifying those twenty sanctions régimes, the Security Council has at times requested States to impose measures that might be described as “voluntary sanctions”. By way of example, in the cases of Southern Rhodesia and South Africa, prior to the eventual imposition of mandatory sanctions the Council requested States to take certain action against Southern Rhodesia and South Africa, without requiring the application of such measures under Chapter VII.²⁴ Similarly, in the case of Cambodia the

²² Article 41, U.N. Charter. Article 41 was designed to be read in concert with Article 39, such that U.N. sanctions should be applied to maintain or restore the peace once the Security Council has determined the existence of a threat to the peace, breach of the peace or act of aggression. For a more detailed discussion of the legal basis governing U.N. sanctions, see Chapter 4.

²³ For an overview of each of those sanctions régimes, see Chapter 5, below. For more detailed summaries, see the Appendices.

²⁴ For the Southern Rhodesian instance, see: S/RES/217 (20 November 1965), operative paragraph 8 (calling upon all States to refrain from assisting the illegal régime in Southern Rhodesia, as well as from providing it with arms and related equipment and material, and to break economic relations with Southern Rhodesia, including by imposing an embargo on oil and petroleum products). For the South African instance, see: S/RES/181 (7 August 1963), operative paragraph 3 (“solemnly” calling upon States to cease selling and shipping arms, ammunition of all types and military vehicles to South Africa).

The status of the measures called for in the South African instance as “voluntary” appears clear with the benefit of hindsight: see, e.g., S/RES/418 (4 November 1977), preambular paragraph 8 (“*Recalling* ... resolution 181 ... and other resolutions concerning a voluntary arms embargo against South Africa”). Nevertheless, at the time the resolution was adopted the Council’s call upon States to halt sales and shipments of arms and related equipment to South Africa could conceivably have been interpreted to fall within the scope of Article 41. Some Council members made a point, however, of clarifying that as far as they were concerned the embargo was not mandatory and did not constitute action under Chapter VII of the Charter of the United Nations. See, e.g., the statements made by the United States and the United Kingdom when resolution 181 (1963) was adopted: S/PV.1056 (7 August 1963), paragraphs 23-30 (United States, noting in paragraph 26 that “a number of Council members [were] not prepared to agree that the situation in South Africa [was] one which [called] for the kind of action appropriate in cases of threats to the peace or breaches of the peace under Chapter VII of the United Nations Charter”, and observing in paragraphs 27 and 28 that the fact that operative paragraphs 2 and 3 of the resolution called upon Member States to take certain action did not give those paragraphs a “mandatory character” and that the words “call upon” do not carry “mandatory force”), paragraphs 33-38 (United Kingdom, agreeing with the United States that the resolution just adopted and the measures which it called upon all States to take

Council requested States bordering Cambodia to prevent the import of timber products from Khmer-Rouge controlled areas.²⁵ These instances are not covered as part of the current analysis, as the measures requested were neither mandatory nor imposed under Chapter VII.

The Security Council has also taken other initiatives that might be interpreted to fall within the scope of Article 41, as they involved action short of the use of military force taken under Chapter VII and after the Council had determined the existence of a threat to the peace. Those initiatives include the creation of two international criminal tribunals²⁶ and the

“should not be regarded as being a resolution within Chapter VII of the Charter”). It is noteworthy, however, that subsequent Council decisions suggested that the embargo carried legal implications beyond those of a mere “voluntary” measure (see, e.g., S/RES/282 (23 July 1970), operative paragraph 3: ‘*Condemns* the violations of the arms embargo called for in resolutions 181, 182 and 191’). The “voluntary” embargo was also reaffirmed and strengthened in a number of subsequent resolutions. See: S/RES/182 (4 December 1963), operative paragraph 5; S/RES/191 (18 June 1964), operative paragraph 12; S/RES/282 (23 July 1970), operative paragraphs 2, 4.

²⁵ See S/RES/792 (30 November 1992), operative paragraph 12 (requesting States to respect a moratorium called for by Cambodia’s Supreme National Council against the export of logs from Cambodia). For further details of that case, see: Cortright, David & Lopez, George A., *The Sanctions Decade: Assessing UN Strategies in the 1990s* (2000) Lynne Rienner, Boulder, CO, 135-45. Unfortunately, however, Cortright and Lopez do not distinguish between the non-mandatory character of the measures requested in the Cambodian instance and the mandatory nature of the other examples of U.N. sanctions to which they refer that have been applied under Chapter VII and are therefore mandatory. These authors, who have written prolifically and with insight on sanctions, have thus unwittingly encouraged the perception that the Cambodian instance ranks among the Iraq, UNITA, and Taliban/Al Qaida cases, to name but a few, as an example of a mandatory U.N. sanctions régime. For a recent example of a piece in which the Cambodian example is treated as equivalent to mandatory sanctions régimes, see: Cortright, David & Lopez, George A., ‘Reforming Sanctions’, in Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004) Lynne Rienner, Boulder, CO, 167-79. The editors of that book have also failed to acknowledge the legal distinction between voluntary and mandatory sanctions, reproducing a table entitled “Security Council-Mandated Sanctions Régimes”, which contains the Cambodian instance alongside genuine examples of mandatory U.N. sanctions régimes.

²⁶ In February 1993 the Council decided to establish an international tribunal to prosecute persons responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia since 1991, requesting the Secretary-General to submit a report containing practical proposals for the creation of such a tribunal: see S/RES/807 (22 February 1993), operative paragraph 1. The Secretary-General submitted such a report to the Council in May and the Council proceeded to approve the Secretary-General’s proposals, to establish the International Tribunal for the former Yugoslavia (commonly referred to as the “ICTY”), and to adopt a Statute for the Tribunal. See: S/RES/827 (25 May 1993), operative paragraphs 1, 2, annex.

application of wide-ranging measures designed to prevent and suppress terrorism (the “counterterrorism régime”),²⁷ and to prevent non-State actors from acquiring weapons of mass destruction and their means of delivery.²⁸ They have not been considered as examples of U.N. sanctions régimes for the purposes of this study, however, as they possess characteristics that distinguish them from traditional mandatory U.N. sanctions régimes, which have been applied against particular State or non-State actors in order to maintain or restore international peace and security.²⁹

The Council decided to establish the International Tribunal for Rwanda (commonly referred to as the “ICTR”) in November 1995. See: S/RES/955 (8 November 1995), operative paragraph 1.

²⁷ In the wake of the September 11, 2001 terrorist attacks in the United States, the Council established a régime of mandatory measures to be taken against terrorists and terrorism and created a Committee to monitor the implementation of those measures. The resolution imposing those measures – resolution 1373 (2001) – has come to be known as the “Counterterrorism resolution” and the Committee so created is referred to as the “Counterterrorism Committee”, or the “CTC”. See: S/RES/1373 (28 September 2001), preambular paragraph 3 (reaffirming that acts of international terrorism constitute a threat to international peace and security), preambular paragraph 10 (Invoking Chapter VII), operative paragraph 1 (imposing financial sanctions against terrorists and those associated with them), operative paragraph 2 (requiring States to refrain from providing support to such individuals and entities and to take action to criminalize terrorism and to prosecute terrorists) operative paragraph 6 (deciding to establish the CTC, in accordance with rule 28 of the Council’s provisional rules of procedure).

²⁸ In April 2004 the Council adopted resolution 1540 (2004), requiring States to take a range of measures designed to prevent non-State actors from acquiring weapons of mass destruction and their means of delivery. At the same time the Council also established a Committee (“the 1540 Committee”) to administer the application of those measures. See: S/RES/1540 (28 April 2004), operative paragraphs 1 (requiring States to refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use weapons of mass destruction and their means of delivery), 2 (requiring States to adopt and enforce laws prohibiting any non-State actor from developing, acquiring, manufacturing, possessing, transporting, transferring or using weapons of mass destruction and their means of delivery), 3 (requiring States to take a range of domestic measures to prevent the proliferation of weapons of mass destruction), 4 (establishing the 1540 Committee).

²⁹ The case for excluding the international criminal tribunals from a study of mandatory U.N. sanctions régimes is self-explanatory, as the tribunals clearly do not constitute sanctions régimes in the sense of a collection of mandatory measures to be imposed by States against a particular target. The case for excluding the counterterrorism and weapons of mass destruction régimes is perhaps not so clear-cut, as those mechanisms share a number of characteristics with sanctions régimes, including requiring States to take certain actions short of the use of force to address an identified threat to international peace and security. Nevertheless, a distinction can be drawn between the sanctions régimes featuring in this study, on the one hand, and the counterterrorism and weapons of mass destruction régimes, on the other, due to their scope and ambition. Traditional sanctions régimes have been imposed against concrete, readily identifiable State and non-State actors, with the aim of inducing a particular response from those actors that would result in the lifting of sanctions. In contrast, the counterterrorism

As documented below in Chapter 7, the Security Council has acted upon its sanctions powers to impose a wide variety of sanctions.³⁰ Among the broad categories of U.N. sanctions employed by the Council have been economic sanctions, financial sanctions, representative sanctions, aviation sanctions, and sports, scientific and cultural sanctions. As part of the broader category of economic sanctions, the Council has employed both “comprehensive sanctions”, thus establishing a blanket ban on all but humanitarian trade with a target, and it has applied “particular sanctions”, which target the import to or export from a target of particular strategic items such as arms, diamonds and oil.

1.3 Research Methodology

In preparing this thesis, three main sources of information were drawn upon – literature reviews, off-the-record interviews and practical professional experience.

1.3.1 Literature reviews

A number of comprehensive literature searches and reviews were conducted while this thesis was being compiled. Each review focused upon different themes that were integral at a given time to the manner in which the project was evolving. In the earliest days of

and weapons of mass destruction régimes are applied against a general class of actors (“terrorists and terrorism” in the case of the counterterrorism régime, and “non-State actors” in the case of the weapons of mass destruction régime), in response to a general threat that is unlikely ever to be resolved. As Szasz notes, these new forms of Security Council action amount to legislating rather than constituting traditional sanctions employed against concrete actors with the aim of resolving a particular conflict or situation: Szasz, Paul C., ‘The Security Council Starts Legislating’ (2002) 96 *AJIL* 900-905, 902 (“In the past ... the Security Council has often required states to take certain actions, such as to implement sanctions against a particular state ..., but these requirements always related to a particular situation or dispute and, even though not explicitly limited in time, would naturally expire when the issue in question and all its consequences were resolved. By contrast, as Resolution 1373 (2001), while inspired by the attacks of September 11, 2001, is not specifically related to these ... and lacks any explicit or implicit time limitation, a significant portion of the resolution can be said to establish new binding rules of international law – rather than mere commands relating to a particular situation”).

³⁰ See Part III, Chapter 7, below: “Delineating the Scope of Sanctions”.

doctoral research, literature reviews were undertaken regarding potentially instructive theoretical approaches. Surveys were thus conducted of developments and trends in the spheres of international legal theory and international relations theory. At the same time, the expanding general literature on sanctions was also reviewed. When the focus of writing turned to the practical aspects of the United Nations sanctions system, the main body of literature consulted was sanctions-related primary sources, including the decisions, deliberations and reports of the Security Council and its sanctions-related subsidiary bodies. Access to these documents, which are all issued publicly as part of the United Nations documentation system, was gained at U.N. depository libraries in Australia, at the Dag Hammarskjöld and legal libraries at U.N. headquarters in New York, and via the United Nations Official Documents System (ODS).

1.3.2 Off-the-record interviews and practical professional experience

With the exception of the earliest period of doctoral research, which was conducted on campus at the University of Tasmania Law School, the majority of doctoral research and writing was conducted in New York City. In early-1999, while still based in Hobart, a four-month international research trip was undertaken in order to gain a deeper understanding of the manner in which U.N. sanctions operated in practice. During that research trip a number of off-the-record interviews were conducted with diplomats, United Nations Secretariat staff, and activists and practitioners at U.N.-affiliated non-governmental organizations. Those interviews provided valuable insights into how the Security Council and its Sanctions Committees functioned in practice. Similarly valuable theoretical insights were gained on the same research trip through informal meetings with scholars and academics, as well as

through consulting extremely impressive libraries, in Canada, Germany, Japan, the United Kingdom and the United States.

The preparation of this thesis has also benefited from experience gained while working for the Security Council Affairs Division of the U.N.'s Department of Political Affairs since May 2001. Among the benefits gained have been learning to navigate the high seas of United Nations documentation and receiving invaluable, hands-on experience observing the formal and informal proceedings of the Security Council and its subsidiary organs. While the temptation to draw upon confidential files in compiling this thesis has been assiduously resisted, the practical insights gained while working for the United Nations have unavoidably informed the recommendations proposed.

1.4 The Path Ahead

Analysis in this thesis is divided into four Parts, containing twelve chapters. Part I, into which this chapter falls, sets the stage for subsequent analysis. This chapter has provided the overall context for discussion, introducing U.N. sanctions and explaining the central thesis and key objectives of the project, as well as providing an overview of the research methodology employed. Chapter 2 builds upon this introduction by outlining a theoretical framework for exploring the extent to which sanctions have strengthened the rule of law. It illustrates how the concept of the rule of law has increasingly influenced the activities of the United Nations and its Security Council. It then explores what is meant by the concept of the rule of law, proposing an accountability-based model, according to which the primary aim of the rule of law is to prevent the misuse or abuse of power. The rule of law is thus conceptualised as consisting of five basic elements that are generally present in systems that aim to prevent the misuse or abuse of power – transparency, consistency,

equality, due process and proportionality. The theoretical framework thus proposes that, to the extent that the U.N. Security Council and its Sanctions System respect and promote those five basic elements, they can be said to reinforce the rule of law.

Part II explores the origins of the Security Council's sanctions powers, tracing the path leading to the enshrinement of the Security Council's sanctions powers in the United Nations Charter. Chapter 3 describes the "pre-history" of U.N. sanctions, surveying historical precedents in international relations for the employment of non-military coercive strategies as a means of compelling the resolution of international disputes, and touching upon the sanctions experience of the U.N.'s predecessor - the League of Nations. Chapter 4 outlines the legal framework underpinning the Security Council's use of sanctions.

Part III describes how U.N. sanctions have operated in practice, charting the contours of the evolving U.N. sanctions system. Chapter 5 outlines the manner in which the Security Council's sanctions-related actions have led to the evolution of the U.N. sanctions system. It also contains a brief overview of each of the twenty mandatory sanctions régimes established to date by the Security Council. Chapter 6 reviews the manner in which the Council has established the legal basis for the application of sanctions. It thus describes how the Council has determined the existence of threats to the peace, breaches of the peace and acts of aggression, invoked Chapter VII of the Charter and articulated sanctions objectives. Chapter 7 surveys the manner in which the Council has delineated the scope of its sanctions régimes, applying different measures to suit different situations. Chapter 8 outlines some strategies the Council has employed to fine-tune the imposition of sanctions, including clarifying senders and targets, defining the temporal application of sanctions, and addressing the unintended consequences of sanctions upon civilian populations and third States.

Chapter 9 focuses upon the manner in which the Council has established subsidiary bodies with responsibilities relating to the administration and monitoring of sanctions. Chapter 10 describes how the Council has also bestowed sanctions-related responsibilities upon other international actors, including for sanctions monitoring, implementation and enforcement.

Part IV then applies the theoretical framework developed in Part I to the U.N. sanctions system described in Parts II and III. Chapter 11 scrutinises the relationship between the U.N. sanctions system and the rule of law, critically evaluating the extent to which sanctions have strengthened the rule of law. It concludes that the U.N. sanctions system exhibits shortcomings in respect of each of the key elements of the rule of law and outlines policy recommendations designed to address those shortcomings. Chapter 12 contains concluding remarks and provides a summary of the key policy proposals designed to ensure that U.N. sanctions respect, promote and reinforce the rule of law.

2. U.N. sanctions and the rule of law: a theoretical framework for analysis

"We are here to strengthen and adapt this great institution, forged 55 years ago in the crucible of war, so that it can do what people expect of it in the new era - an era in which the rule of law must prevail."

- U.N. Secretary-General Kofi Annan¹

"[W]hile prescribing norms and standards for national or international conduct, the Security Council must scrupulously accept those norms for itself."

- Prime Minister Rao, of India²

This chapter proposes a theoretical framework designed to assess the extent to which the Security Council's application of sanctions has respected and reinforced the rule of law. The chapter begins by explaining the relevance of the concept of the rule of law to the work of the Security Council, exploring its implicit pedigree in the Charter of the United Nations, as well as the manner in which it has proven increasingly influential in the practice of the United Nations in general and of the Security Council in particular. It then clarifies the understanding employed here of the rule of law, proposing a basic, accountability-based model of the rule of law against which the performance of the United Nations sanctions system can be measured. That model consists of a core set of characteristics or elements that are present in systems of order that seek to resolve conflict by reference to principle rather than through the arbitrary exercise of coercive power. According to that model, the

¹ Secretary-General Kofi Annan – speech delivered at the opening session of the United Nations Millennium Summit: PR/GA/9750 (6 September 2000). For discussion of the Millennium Summit and the Millennium Declaration, see notes 24-25 and accompanying text, below.

Council's sanctions practice can be said to have reinforced the rule of law to the extent that it has promoted and respected these core elements of the rule of law.

2.1 The relationship between the U.N. Security Council and international law

The relationship between the Security Council and law is complex and multifaceted. On the one hand the Council is a political body, which takes decisions that are dictated largely by political rather than legal considerations. On the other, by virtue of its power to issue decisions that are legally-binding upon the Member States of the United Nations and to take military and non-military coercive action to enforce those decisions, the Security Council is a body whose activities have profound legal implications.³ The Council's ability to create legal obligations that are binding on practically all States has led some commentators to describe some aspects of the Council's activities as quasi-legislative in character.⁴

² Prime Minister Rao, of India, speaking at the Security Council Summit Meeting, held at the level of Heads of State: S/PV.3046 (31 January 1992), p. 97. For discussion of the Council's Summit Meeting, see notes 21-23 and accompanying text, below.

³ As discussed in Chapter 4, the Council's power to bind U.N. Member States derives from Article 25 of the Charter of the United Nations. Article 25 provides that: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter". Chapter 4 also describes how, through Articles 39, 41 and 42 of the Charter, the Council is empowered to take military and non-military coercive action to address threats to the peace, breaches of the peace and acts of aggression.

⁴ Although the Council's quasi-legislative activity may be less sophisticated than the legislative activity exhibited by most national parliamentary or congressional legislatures, the legal consequences flowing from Council decisions bestow upon those decisions a quality akin to legislation. As noted in Chapter 5, the Council's mandatory sanctions-related decisions amount to legislating. The Council's resolutions requiring States to take global action to counter-terrorism, including resolution 1373 (2001), also provide examples of legislative activity. For discussion of the extent to which the decision-making by the Council might be considered to approximate legislative activity, see: Kelsen, Hans, *The Law of the United Nations: a Critical Analysis of its Fundamental Problems* (1951) Steven & Sons, London, 736 ("By declaring the conduct of a state to be a threat to, or breach of, the peace, the Security Council may create new law"); Simma, Bruno (ed.), *The Charter of the United Nations: a Commentary* (2002: 2nd edition) Oxford UP, 708-9 ("By allowing for binding measures under Chapter VII, the Charter authorizes the Security Council to create new law and thus to act, to a certain degree, as a legislator"); Szasz, Paul C., 'The Security Council Starts Legislating' (2002) 96 AJIL 900-905 (arguing that with the adoption of resolution 1373 (2001) the Security Council broke new ground by using its Chapter VII powers to order States to take or refrain from

Moreover, the Council has on occasion pronounced itself on the content of international law and international legal obligations, thus interpreting and applying international law in a quasi-judicial manner.⁵ The Council thus sits prominently at the juncture between law and politics in international affairs.

The Security Council's extraordinary ability to create and pronounce upon international law raises the question of where the boundaries lie upon Council action. The United Nations Charter, which endows the Council with its considerable powers, provides a general indication that those powers are not unlimited. Article 24 of the Charter provides:

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of

specified actions in a context not limited to disciplining a particular target); Alvarez, José E., 'Hegemonic International Law Revisited' (2003) 97 *AJIL* 873-88, 874 (referring to the Security Council's "new legislative phase").

⁵ Examples of the Security Council's quasi-judicial pronouncements include declarations regarding the illegality of declarations of statehood in the cases of Southern Rhodesia [S/RES/216 (12 November 1965), operative paragraphs 1 (condemning the declaration of independence by the illegal white minority régime in Southern Rhodesia) and 2 (calling upon all States not to recognise nor render assistance to the "illegal régime"); S/RES/217 (20 November 1965), operative paragraph 3 (regarding the declaration of independence by the "racist settler minority" as having "no legal validity")] and the "Turkish Republic of Northern Cyprus" [S/RES/541 (18 November 1983), operative paragraphs 1 (deploring the declaration by Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus) and 2 (considering that declaration to be legally invalid and calling for its withdrawal); S/RES/550 (11 May 1984), operative paragraph 2 (condemning the purported exchange of ambassadors between Turkey and the Turkish Cypriot leadership, declaring them illegal and invalid and calling for their immediate withdrawal)], as well as declarations regarding boundary delimitation, as in the case of the boundary between Iraq and Kuwait [S/RES/687 (3 April 1991), preambular paragraphs 6 (noting that by an agreement dated 4 October 1963, the governments of Iraq and Kuwait had formally recognised the boundary between Iraq and Kuwait) and 7 (noting the need for demarcating that boundary), operative paragraphs 2 (demanding that Iraq and Kuwait respect the inviolability of their shared boundary), 3 (requesting the Secretary-General to lend assistance to demarcate the boundary) and 4 (deciding to guarantee the inviolability of the boundary)].

For further discussion of the quasi-judicial nature of certain Security Council activities, see: Kelsen, *The Law of the United Nations*, just noted, chapter 14 in general (359-462); Bowett, Derek W., 'Judicial and Political Functions of the Security Council and the International Court of Justice' in Fox, Hazel (ed.), *The Changing Constitution of the United Nations* (1997) The British Institute of International and Comparative Law, London, 73-88; Simma, *The Charter of the United Nations* (2nd edition), just noted, 708 (noting that the Council has in fact performed quasi-judicial functions in a number of instances, but arguing that quasi-judicial determinations by the Council should remain exceptional and should be confined to cases where they are indispensable for the exercise of the Council's responsibilities).

international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations.⁶

The limitation upon Security Council action is thus to be found in the U.N.'s Purposes and Principles, which are located in Articles 1 and 2, respectively. The Purposes comprise the U.N.'s mission statement, providing a general and ambitious set of goals which encompass: the maintenance of international peace and security;⁷ the development of friendly relations among nations;⁸ and the facilitation of international cooperation and promotion of human rights.⁹ The Principles outline a set of general norms that aim to govern international relations, including: the principle of the sovereign equality of Member States;¹⁰ the prohibition upon the use or threat of force;¹¹ and a proscription upon United Nations intervention in the domestic affairs of States, other than in the case of Chapter VII enforcement action.¹²

The U.N.'s Purposes and Principles therefore cover a sufficiently broad range of activities that, whilst Article 24 makes it clear that there are limits upon the Council's freedom to exercise its considerable powers, it remains an open question as to where precisely those limits lie. The absence of any institutional mechanism to guarantee that the Council exercises its powers in accordance with Article 24 or to extrapolate upon the precise meaning of the restrictions implied by that Article has led some commentators to

⁶ Article 24 of the Charter of the United Nations.

⁷ Article 1(1) of the Charter.

⁸ Article 1(2) of the Charter.

⁹ Article 1(3) of the Charter.

¹⁰ Article 2(1) of the Charter.

¹¹ Article 2(4) of the Charter.

¹² Article 2(7) of the Charter.

conclude that the Security Council can, does and should act above the law.¹³ Others have sought to resolve the uncertainty by exploring and identifying potential legal limits upon Council action.¹⁴ Yet others have examined whether the matter might be resolved via judicial review of the Council's action by the International Court of Justice.¹⁵

The question of where the legal boundaries lie upon the exercise of the Council's sanctions powers may eventually be resolved as the legal system governing international conflict gains greater sophistication. When that moment arrives, a study of U.N. sanctions and the rule of law will likely explore the Security Council's sanctions practice from the perspective of legality, examining whether the Council's actions have conformed with or violated the legal norms regulating the application, implementation and enforcement of sanctions and thus constitute the boundaries upon permissible Council action in the field of U.N. sanctions. In the current day and age and the present study, however, an analysis of U.N. sanctions and the rule of law is less a matter of legality and more a matter of policy.

As indicated in Chapter 1, the Council's effectiveness is ultimately undermined by the perception that the Security Council stands above the law and may act without restriction. In order to be an effective body, the Security Council relies upon the expectation

¹³ Dulles, John Foster, *War or Peace* (1950) Macmillan, NY, 194-5 ("The Security Council is not a body that merely enforces agreed law. It is a law unto itself. If it considers any situation a threat to the peace, it may decide what measures shall be taken. No principles of law are laid down to guide it; it can decide in accordance with what it thinks is expedient").

¹⁴ See, e.g.: Bedjaoui, Mohammed, *The New World Order and the Security Council: Testing the Legality of its Acts* (1994) Martinus Nijhoff, Netherlands.

¹⁵ See, e.g.: Gowlland-Debbas, Vera, 'The Relationship Between the International Court of Justice and the Security Council in Light of the *Lockerbie* Case' (1994) 88 AJIL 643-77; Martenczuk, Bernd 'The Security Council, the International Court of Justice and Judicial Review: What Lessons from *Lockerbie*?' (1999) 10 EJIL 517-47; Gowlland-Debbas, Vera, 'The Functions of the United Nations Security Council in the International Legal System' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 277-313; Dugard, John, 'Judicial Review of Sanctions', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 83-91. Like the Security

that States will respect and implement its decisions in good faith and in accordance with the Charter of the United Nations. As a body that is so dependent upon the good faith efforts of others to obey the law, the Council should in turn accord maximum respect to the rule of law. It is in the Council's own best interests to act, and to be perceived to act, in accordance with the dictates of principle rather than politics. In the absence of an effective review mechanism – whether judicial or otherwise – to monitor the legitimacy of the Council's actions, the Council itself should consider it both necessary and desirable to promote and respect the rule of law.

Moreover, as the discussion in the following section illustrates, the Security Council has fostered an increasingly close relationship with the rule of law, promoting the notion that the establishment and promotion of the rule of law is essential for lasting peace in societies emerging from conflict. If the Council's initiatives towards promoting the rule of law are to possess genuine authority, the Council must practice what it preaches. In its own activities, the Council should serve as an example of the very tenets of the rule of law that it is promoting in post-conflict environments.

2.2 The relationship between the Security Council and the rule of law

Although the phrase “the rule of law” does not appear in the Charter of the United Nations, the notion of the rule of law has nevertheless had a significant influence upon United Nations activities from the moment of the Organization's conception.¹⁶ At the San Francisco

Council, the International Court of Justice constitutes one of the primary U.N. organs. For further discussion, see Chapter 4, section 4.1.

¹⁶ Brownlie describes the promotion of the rule of law as the “moral purpose” of the United Nations: Brownlie, Ian, *The Rule of Law in International Affairs: International Law at the Fiftieth Anniversary of the United Nations* (1998) Martinus Nijhoff, The Hague, 1 (“The

Conference, a number of speakers emphasized the importance of the rule of law, with some arguing that the Charter should contain a reference to the rule of law.¹⁷ In the Security Council's very first meeting, some delegates outlined a vision in which the Council would play a role in strengthening the rule of law.¹⁸ Some decades later the Organization's other high-profile organ – the General Assembly – adopted a resolution with the primary aim of

political agency behind the formation of the United Nations Charter was the Second World War and the associated history of barbarism. The moral purpose of the United Nations was the promotion of the Rule of Law in international relations”).

¹⁷ In a spirited reference to the rule of law made at the first plenary session, the Chinese delegate stated: “Let us face hard facts. A long effort is required of all of us before an effective rule of law is established in world affairs. We in China know it by bitter experience. The rule of law was to have been defended by the old League of Nations; but it was disregarded, as we learned to our cost, despite the most solemn covenants entered into by would be defenders ... If there is any message which my country, which has been one of the principal victims of aggression and the earliest victim, wishes to give this Conference, it is that we must not hesitate to delegate a part of our sovereignty to the new international organization in the interests of collective security. We must all be ready to make some sacrifices in order to achieve our common purpose. Among nations, no less than among individuals, we must forthwith accept the concept of liberty under law”: *Documents of the UNCIO*, Vol. 1, 129-130. See also: Evatt, Herbert Vere, *The United Nations* (1948) Harvard UP, Cambridge, MA, 36 (listing as one of nine objectives pursued by the Australian delegation at San Francisco: “To declare that justice and the rule of law shall be principles guiding the action of the Security Council”). The Australian delegation in fact proposed the following amendment to the draft provision that was to become Article 1(2): “To develop friendly relations among nations and to take other appropriate measures to strengthen universal peace and promote justice and the rule of law”: *Documents of the UNCIO, ibid*, Vol. 3, 543. For discussion of the process leading to the adoption of the Charter and the establishment of the United Nations, see Chapter 4, section 4.1. For the text of Article 1(2), as well as the other provisions of Article 1, which contains the purposes of the United Nations, see also Chapter 4.

¹⁸ A number of speakers referred to the rule of law in the Council's very first meeting, held on 17 January 1946. See: *Security Council Official Records, First Year, First Series, January-February 1946*, 6 (where the first President of the Security Council, representing Australia, stated: “I should call attention to the need, in accordance with Article 43 of the Charter, for the negotiation of special security agreements, so that the Security Council may have available at its call as soon as possible the armed forces, assistance and facilities necessary to maintain peace. For the conclusion of these agreements, the advice and assistance of the Military Staff Committee will be necessary; one of the first acts of the Security Council will be to call this Committee into being and to direct it in the tasks that it is to perform. When this process is complete, the Security Council will be fully equipped to perform a function which is unique in the history of international organization – the direction of collective action for the maintenance of peace, justice, and the rule of law”), 8 (where the representative of China stated that “On this Council rests the primary responsibility for meeting international peace and security in the world. ... It has also an important role to play in bringing about settlement of international disputes by peaceful means and in conformity with the principles of justice and international law”), 9 (where the representative of France stated “The Security Council's task is a heavy one, but it will be sustained by our hope, which is shared by the people, and by our remembrance of the sufferings of all those who fought and died that the rule of law might prevail”).

strengthening the rule of law.¹⁹ The Assembly has since adopted regular resolutions with the same goal.²⁰

But it has been in the period following the end of the Cold War that the notion of the rule of law has truly risen to prominence in United Nations practice. In January 1992 world leaders gathered in New York for the first ever Summit Meeting of the Security Council, in order to discuss the theme “The Responsibility of the Security Council in the Maintenance of International Peace and Security”.²¹ At that meeting, which was to set the agenda for United Nations and Security Council action over the following decade,²² a number of speakers underlined the importance of strengthening the rule of law in international affairs.²³ In

¹⁹ The General Assembly first adopted a resolution entitled “Strengthening the Rule of Law” in December 1993, as part of its follow-up to the Vienna Conference on Human Rights, which had recommended that a comprehensive programme be established within the U.N. Centre for Human Rights to help States build and strengthen national structures to facilitate the observance of human rights and the maintenance of the rule of law. See: A/RES/48/132 (20 December 1993).

²⁰ Following its first resolution on strengthening the rule of law the Assembly adopted an annual resolution on the same topic until 1998. Since 1998 it has adopted biannual resolutions. For the most recent resolution on strengthening the rule of law, see: A/RES/57/221 (18 December 2002).

²¹ For the verbatim record of the meeting, see: S/PV.3046 (31 January 1992): *Summit Meeting of the Security Council on “The Responsibility of the Security Council in the Maintenance of International Peace and Security”*.

²² At the end of the meeting the Security Council adopted a presidential statement in which it requested the Secretary-General to prepare a wide-ranging report to facilitate the Council’s efforts to maintain international peace and security, with recommendations for strengthening the capacity of the United Nations for preventive diplomacy, peacemaking and peacekeeping: see S/23500 (31 January 1992): *Presidential statement dated 31 January 1992*, paragraphs 15-16. The resulting report, which was entitled “An Agenda for Peace” proved extremely influential in determining future United Nations and Security Council policy: S/24111 (17 June 1992): *An agenda for peace*.

²³ See, e.g., S/PV.3046, 8-9 (Secretary-General Boutros-Boutros Ghali), 18 (President Mitterand of France), 23 (President Borja of Ecuador), 36 (King Hassan II of Morocco), 47 (President Yeltsin of the Russian Federation), 50 (a-z) & 50 (President Bush of the United States), 59-60 (President Perez of Venezuela), 67 (Federal Chancellor Vranitsky of Austria), 78-9 (Prime Minister Veiga of Cape Verde), 97 (Prime Minister Rao of India), 107 (Prime Minister Miyazawa of Japan), 133 (Minister Shamuyarira of Zimbabwe).

Three of those statements – those of President Bush of the United States, President Mitterand of France and Prime Minister Veiga of Cape Verde – give a flavour of the calls to expand and strengthen the rule of law. President Bush urged that “We must advance the momentous movement towards democracy and freedom ... and expand the circle of nations committed to human rights and the rule of law” (at p. 50). President Mitterand, whilst not explicitly using the

September 2000, world leaders again gathered in New York to mark an important symbolic occasion: the U.N.'s Millennium Summit. With the aim of setting the United Nations agenda for the twenty-first century, the leaders adopted the Millennium Declaration.²⁴ The Declaration stressed, among other things, that the maintenance of international peace and security depends upon fostering and strengthening the rule of law.²⁵ It thus demonstrated that the general membership of the United Nations considered the promotion of the rule of law to constitute a key objective for the Organization as it entered the twenty-first century.

term "rule of law", nevertheless observed that: "Past experience has shown that nothing can be done without the determination of States, particularly the major Powers, to reject the law of the jungle and the principle that might is right" (at p. 18). Prime Minister Veiga stated that: "The United Nations, through its Security Council, has to act – as envisaged by the Charter – as the guardian of the security of nations, especially the small countries, and as a catalyst for the promotion of the primacy of the rule of law in international relations" (at p. 78).

²⁴ A/RES/55/2 (18 September 2000): *United Nations Millennium Declaration*, (hereafter "Millennium Declaration").

²⁵ The Millennium Declaration identified seven key objectives with "special significance": "Peace, security and disarmament"; "Development and poverty eradication"; "Protecting our common environment"; "Human rights, democracy and good governance"; "Protecting the vulnerable"; "Meeting the special needs of Africa"; and "Strengthening the United Nations": see Millennium Declaration, *ibid* paragraph 7. Notably, the very first objective listed within the first category, "Peace, security and disarmament", was "To strengthen respect for the rule of law in international affairs as in national affairs": paragraph 9. Also notable for the purposes of this thesis, another objective listed under "Peace, security and disarmament" was: "To minimize the adverse effects of United Nations economic sanctions on innocent populations, to subject such sanctions régimes to regular reviews and to eliminate the adverse effects of sanctions on third parties": see also paragraph 9.

The rule of law also featured prominently under the category "Human rights, democracy and good governance", as Member States pledged "to spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms": paragraph 24. They therefore resolved to take a number of steps in pursuit of that pledge, all of which aimed to reinforce the rule of law within their own national societies: paragraph 25. Those steps included: a) respecting fully and upholding the *Universal Declaration of Human Rights*; b) striving for the full protection and promotion of civil, political, economic, social and cultural rights for all; c) strengthening the capacity to implement the principles and practices of democracy and respect for human rights, including minority rights; d) combating violence against women and implementing the *Convention on the Elimination of All Forms of Discrimination against Women*; e) taking measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate acts of racism and xenophobia and to promote greater harmony and tolerance; f) working collectively for more inclusive political processes, allowing genuine participation by all citizens; and g) ensuring the freedom of the media to perform their role and the right of the public to have access to information.

More recently, in September 2003, the Security Council held two meetings under the agenda item “Justice and the Rule of Law”. At those meetings, the focus of discussion was largely on the need to promote and strengthen the rule of law within societies that had been shattered by conflict.²⁶ Nevertheless, many speakers argued that the rule of law was important not only within post-conflict, national societies, but also in international relations in general.²⁷ Moreover, some of those speakers suggested that the Security Council’s actions should both promote and *respect* the rule of law.²⁸

²⁶ The non-paper circulated by the President of the Security Council at the time (the United Kingdom) and on file with the author made this point clear.

²⁷ See, e.g.: S/PV.4833 (24 September 2003): *Provisional Verbatim Record of the 4833rd Meeting of the Security Council*, p. 2 (Secretary-General Kofi Annan, observing that: “This Council has a very heavy responsibility to promote justice and the rule of law in its efforts to maintain international peace and security. This applies both internationally and in rebuilding shattered societies”), p. 4 (Mr. Khurshid Mehmud Kasuri, Minister for Foreign Affairs of Pakistan, stating that: “Establishing the principles of justice and the rule of law is essential to the establishment and maintenance of order at the inter-State and intra-State levels”), p. 5 (Mr. Igor Ivanov, Minister for Foreign Affairs of the Russian Federation, noting that his country believed that the principle of the rule of law was “an imperative for the entire system of international relations”), p. 13 (Mr. François Lonsény Fall, Minister for Foreign Affairs of Guinea, stating that: “The international community has a stake in ensuring that the rule of law replaces the law of the jungle in all areas of activity and at all levels of social and political organization”), p. 14, (Ms. Ana Palacio, Minister for Foreign Affairs of Spain, observing that: “The primary objective of the United Nations, and especially of the Security Council, is to ensure international peace and security. That goal is inseparable from the existence of a concept of law common to all international society, a body of legal categories basically accepted by all”), p. 21 (Ambassador James Cunningham, of the United States, noting that: “[T]he rule of law is indispensable to international peace and security ... As a nation founded by law, the United States is the unflagging champion of the rule of law. By working together in support of the rule of law, we believe the international community can strengthen peace and help conflict-ridden societies build a better future”), p. 21 (Mrs. Soledad Alvear Valenzuela, Minister for Foreign Affairs of Chile, stating that: “The rule of law, democracy and human rights are the core values of our Organization and the guiding principles of the international system. The drafters of the Charter assigned to justice and the rule of law a pre-eminent place in an international system that aspires not only to be predictable, but also to make real the idea of justice. The rule of law stands as a bulwark against arbitrariness on two levels: first, with regard to relations between States and, secondly, with regard to relations between States and individuals”); S/PV.4835 (30 September 2003): *Provisional Verbatim Record of the 4835th meeting of the Security Council*, p. 22 (Ambassador Fogh, of Sweden, observing that: “All Members of the United Nations have an obligation to respect and ensure respect for the rule of law in international relations”).

²⁸ See, e.g.: S/PV.4833 (24 September 2003), p. 9 (Mr. Luis Ernesto Derbez, Minister for Foreign Affairs of Mexico: “[F]or the sake of justice and the rule of law, the Security Council must continue to act on the bases of legality that provide support for its mandate”), p. 22 (Mrs. Soledad Alvear Valenzuela, Minister for Foreign Affairs of Chile: “The rule of law offers the

Not surprisingly, the connection between the Security Council and the rule of law has also been highlighted in the field of sanctions. In meetings at which the Security Council has imposed or modified sanctions, speakers have emphasised that one goal of sanctions is to reinforce respect for the rule of law or have observed that sanctions serve as one of the key tools in the Council's arsenal to address actors which have transgressed the norms of international society.²⁹ Thus sanctions have been portrayed as an instrument which can be

Security Council the possibility of basing its work on a concept that embodies the core values of the United Nations"); S/PV.4835 (24 September 2003), p. 13 (Ambassador Pfanzer, of Austria: "[A]mong the foremost duties of the United Nations is ensuring and enforcing compliance with international norms. The Security Council has a special responsibility in that regard. A Council dedicated to the resolute implementation of international law is the best incentive for the implementation of law at the national level"), p. 16 (Ambassador Helg, of Switzerland: "Justice and respect for law must prevail first and foremost in relations between States. They must also constantly guide the action of the Security Council and the other bodies of the United Nations").

²⁹ In connection with the Iraq sanctions régime, see: S/PV.2933 (6 August 1990): *Provisional Verbatim record of the 2933rd meeting of the Security Council*, p. 18 (United States, speaking just before the Council adopted resolution 661 (1990), applying sanctions against Iraq: "Iraq must learn that its disregard for international law will have crippling political and economic costs ... Our concerted resolve will demonstrate that the international community does not – and will not – accept Baghdad's preference for the use of force, coercion and intimidation."), 25 (Canada, also just before the adoption of resolution 661 (1990): "These measures are essential to safeguard the rule of law and to deter future aggressors."), 28 (United Kingdom, also before adoption of resolution 661 (1990): "Today the Security Council faces its responsibilities. It must succeed this time where the League of Nations failed and where it itself has faltered in the past. ... It should make of the Council what the Founding Fathers intended it to be, and it should set a new precedent for the further and better management of a world order based on respect for law, sovereignty and territorial integrity."); S/PV.2938 (25 August 1990): *Provisional Verbatim record of the 2938th meeting of the Security Council*, 36 (Canada: commenting that the primary objective of the resolution just adopted – resolution 665 (1990) – was to "bring about respect for the rule of law"); S/PV.2943 (25 September 1990): *Provisional Verbatim record of the 2943rd meeting of the Security Council*, 7-10 (Secretary-General: "The power at the disposal of the Security Council is the power commanded by the solidarity of nations opposed to the transgression of the Charter of the United Nations. It is first and foremost the power of principle. What makes the Council's task particularly onerous – and, I am sure, ultimately fruitful – is that principles must be consistently applied and the Council's actions must be based on equity and perceived to be so. The world has not had an experience of enforcement provisions under Chapter VII being used in the manner and on the scale in which they are in the present crisis. Now that they are actually applied, the United Nations is being subjected to an unprecedented test. It needs to demonstrate that the way of enforcement is qualitatively different from the way of war; that as such actions issues from a collective engagement, it requires a discipline all its own; that it strives to minimize undeserved suffering to the extent humanly possible, and to search for solutions to the special economic problems confronted by states arising from the carrying out of enforcement measures; that what it demands from the party against which it is employed is not surrender but the righting of the wrong that has been committed; and that it does not foreclose diplomatic efforts to arrive at a

used to strengthen, reinforce and promote the rule of law. A link has also been drawn between the rule of law and the need to minimise the unintended consequences of sanctions upon civilian populations and third States.³⁰

2.3 Proposing a basic model of the rule of law and a framework for analysis

Although the rule of law has become increasingly influential in the practice of the Security Council, the concept defies easy definition.³¹ Moreover, despite the common usage of the term in the Security Council and other prominent international fora, surprisingly few

peaceful solution consistent with the principles of the Charter and the determinations made by the Security Council. ... The world situation generally, and in particular the situation in the Middle East as a whole, presents itself as a proving ground for our probity in establishing the rule of law. If peace is to be made secure, justice must have the last word", 32 (France: describing sanctions against Iraq as the "instrument" of the policy of a "new international order", which aims to ensure "the primacy of law and justice over force and arbitrary acts"), 67 (Ethiopia: Ethiopia's position with respect to Iraq's invasion, and its close cooperation with the rest of the Council members to bring about the withdrawal of Iraqi troops and the restoration of the legitimate Government of Kuwait, are prompted by our country's commitment to the system of collective security. We strongly believe that the resolve and solidarity manifested by the international community in defence of the rule of law are the surest means of deterring aggression"),

In connection with the Libya sanctions régime, see: S/PV.3063, p. 67 (the United States: "That message is the surest guarantee that the United Nations Security Council, using its specific, unique powers under the Charter, will preserve the rule of law and ensure the peaceful resolution of threats to international peace and security, now and in the future"); S/PV.3063: Zimbabwe, p. 53 ("Zimbabwe attaches great importance to the rule of law in relations between States. As the body entrusted with the primary responsibility for the maintenance of international peace and security, the Council must attach due importance to international law, including international conventions").

³⁰ Statement by Mrs. Soledad Alvear Valenzuela, Minister for Foreign Affairs of Chile, during the High-Level Meeting of the Security Council on "Justice and the Rule of Law", held on 24 September 2003: S/PV.4833, p. 22 ("One of the areas in which the Council can make a contribution to the rule of law and international justice is that of sanctions imposed pursuant to Chapter VII. It is necessary to reduce to a minimum the negative impact which economic sanctions can have on innocent civilian populations and to address the issue of the adverse impact of sanctions on third countries"). See also paragraph 9 of the Millennium Declaration, as referred to in note 25, above.

³¹ Watts, Sir Arthur, 'The International Rule of Law' (1993) 36 *German YBIL* 15-45, 15 ("[T]he rule of law is more easily invoked than understood. While its fundamental importance is acknowledged and usually taken for granted, it is not a concept with any readily definable content").

studies have focussed upon the concept of the rule of law in international affairs.³² The theoretical model of the rule of law employed here draws inspiration from the growing literature on the rule of law in international affairs, as well as from pertinent statements made in the debates of the Security Council. It does not pretend to be a sophisticated, final-word model for analysing the rule of law in international affairs in general. Rather, it is a pared-down, bare-bones model, identifying certain basic elements which should be present in any system which claims to promote and respect the rule of law. In an international society where the line between politics and law – between power and principle – remains blurred and where the underlying legal structure lacks sophistication, the starting-point for an analysis of the rule of law performance of the U.N. sanctions system must almost inevitably be such a basic model. A highly developed theory or model must await a more sophisticated international legal system.

Commentators have approached the subject of the international rule of law from a number of perspectives. Academics have argued that, although the international legal system may be less-developed than most domestic legal systems, sufficient precedents of law-respecting and law-abiding behaviour exist in international relations to suggest that interactions between States are often regulated by the rule of law.³³ Some of these works

³² Brownlie has published a valuable monograph on the international rule of law, based upon a lecture series he presented at the Hague Academy of International Law in 1995. See: Brownlie, Ian, *The Rule of Law in International Affairs*, above note 16. For useful shorter pieces addressing the international rule of law in general, see the works listed in the following footnote.

³³ See, e.g.: Brownlie, *The Rule of Law in International Affairs*, *ibid*; Fitzmaurice, G.G., 'The United Nations and the Rule of Law' (1953) 38 *The Grotius Society Transactions* 135-150; Watts, 'The International Rule of Law', above note 31; Brownlie, Ian, 'The Decisions of the Political Organs of the United Nations and the Rule of Law', in Macdonald, Ronald St. J. (ed.), *Essays in honour of Wang Tieys* (1994) Martinus Nijhoff, Dordrecht, Netherlands, 91-102; Falk, Richard, 'The United Nations and the rule of law' (1994) 4 *Transnational Law & Contemporary Problems* 611-42; Teitel, Ruti G., 'Humanity's Law: Rule of Law for the New

take the view that the rule of law exists in systems in which conflicts are regulated with reference to specified legal rules.³⁴ Others interpret the rule of law to consist of a collection of general principles that aim to ensure an ordered and just society.³⁵ International legal practitioners, for their part, have documented the growing breadth of subjects addressed by international codification, as well as the ever-rising numbers of States that have signed onto international treaties, thus demonstrating the increasing reach of the international rule of law.³⁶ Peace-keeping practitioners have also explored the lessons of the U.N.'s peace-keeping endeavours in order to propose methods for fostering the establishment of the rule of law in post-conflict environments.³⁷

Despite their different points of focus and inflection, these studies of the international rule of law share some common threads. All analysts differentiate the rule of law from

Global Politics' (2002) 35 *Cornell ILJ* 355-87; Bacchus, James, 'Groping towards Grotius: the WTO and the international rule of law' (2003) 44 *Harvard ILJ* 533-50.

³⁴ See, e.g., Fitzmaurice, 'The United Nations and the Rule of Law', *ibid*, 136-7 ("[T]he term "Rule of Law" ... denotes essentially the subordination of the will of individual States, in their dealings and transactions inter se, to the body or rules known and applied by international tribunals under the name of international law").

³⁵ See, e.g., Brownlie, Ian, *The Rule of Law in International Affairs*, above note 16, 212-13 (proposing general principles including that: (1) Powers must be based on authority conferred by law; (2) That law must conform to standards of substantive and procedural justice; (3) There must be a separation of powers; (4) A body determining facts and applying legal principles with dispositive effect should observe certain standards of procedural fairness; and (5) All legal persons are subject to rules of law which are applied on the basis of equality).

³⁶ See, e.g.: Corell, Hans, 'The Visible College of International Law: "Towards the Rule of Law in International Relations"' (2001) *ASIL Proceedings* 262-70; Kohona, Palitha T.B., 'The international rule of law and the role of the United Nations' (2002) 36 *International Lawyer* 1131-44; Corell, Hans, 'Developing the Rule of Law among Nations: a challenge for the United Nations', Lecture given to the United Nations Association of the United Kingdom, 7 July 2003: available on-line at www.un.org/law/counsel/info.htm (last visited on 10 December 2003).

³⁷ For examples of the growing literature surrounding the rule of law and peace operations initiated by the United Nations and/or regional organizations, see: The United Nations Association of the United States of America & The Project on Justice in Times of Transition of Harvard University, *A Policy Report of the Partnership Program on Peace-building and Rule of Law* (2003) United Nations Association of the United States of America, NY, NY; Howard, Jessica & Oswald, Bruce, *The Rule of Law on Peace Operations* (2003) Melbourne, Australia (on file with author).

politics.³⁸ In systems that respect and promote the rule of law, the use of power is circumscribed, so that policy is exercised in accordance with the dictates of principle, rather than being employed arbitrarily or for the purpose of expediency or self-interest.³⁹ Moreover, a key tenet of the rule of law is that rules are applied equally, with no one considered to be above the law.⁴⁰

As already indicated, the Security Council's debates also hint at the broad parameters of the concept of the rule of law. Ambassadors and high-level U.N. officials have suggested that the rule of law aims to ensure that conflict is resolved by principle rather than by brute force – by “right” rather than “might” and by “the force of law” rather than the “law of force”.⁴¹ They have emphasised that political power must be subject to the law and that the Security Council should lead by example, observing the very norms it applies.⁴² In

³⁸ See, e.g.: Watts, ‘The International Rule of Law’, above note 31, 23 (“The rule of law is the counterweight to political power; together they establish a balance in which the exercise of power is subject to legal constraints which ensure that power is not abused”); Bacchus, ‘Groping towards Grotius’, above note 33, 546 (“The rule of law is, above all, not politics”).

³⁹ Watts, ‘The International Rule of Law’, above note 31, (“[A]ction which is despotic, capricious, or otherwise unresponsive to legal regulation ... is incompatible with the international rule of law”); Brownlie, ‘The Decisions of the Political Organs of the United Nations’, above note 33, 92 (“Powers exercised by politicians and officials must be based upon authority conferred by law”); Bacchus, ‘Groping towards Grotius’, above note 33, 546 (“With the rule of law, the law is certain, not arbitrary. With the rule of law, the law is written beforehand, and the rules are defined and known in advance”).

⁴⁰ Watts, ‘The International Rule of Law’, above note 31, 30-32; Brownlie, ‘The Decisions of the Political Organs of the United Nations’, above note 33, 92 (“All legal persons are subject to rules of law which are applied on the basis of equality”); Bacchus, ‘Groping towards Grotius’, above note 33, 546 (“With the rule of law, the law is written to apply to all equally, and all, in practice and in reality, are equal before the law. With the rule of law, no one is beneath the concern of the law or above it”).

⁴¹ See, e.g.: S/PV.2977 (Part II: 16 February 1991), 229-30 (statement by the representative of Sweden, made during the Gulf War “[T]he basic and most immediate question is: Shall the force of law or the law of force prevail?”).

⁴² See, e.g.: S/PV.3046 (31 January 1992), 97 (statement by Prime Minister Rao of India: “[W]hile prescribing norms and standards for national or international conduct, the Security Council must scrupulously accept those norms for itself”); S/PV.4835 (30 September 2003), 16 (statement by the representative of Switzerland: “Justice and the rule of law “Justice and respect for law must prevail first and foremost in relations between States. They must also constantly guide the action of the Security Council and the other bodies of the United Nations”).

the context of sanctions, speakers have stressed that the Security Council should not engage in “double standards” when choosing whether to impose sanctions and that once sanctions are employed they should be applied in a consistent and uniform manner.⁴³ They have spoken of the need for the Security Council and its Sanctions Committees to act transparently,⁴⁴ and they have emphasised the need to ensure that sanctions are applied proportionately, so that the negative effects upon civilian populations and third States are minimised.⁴⁵

2.3.1 A working model of the rule of law

A common thread running through any characterisation of the rule of law is that power should be exercised in accordance with principle. At its core, the rule of law thus seeks to prevent the abuse of power. The understanding of the rule of law employed in this thesis uses this key premise as the bedrock on which to construct an accountability-based

⁴³ S/PV.2977 (Part I: 13 February 1991), 27-8 (statement by the representative of Cuba: “The economic sanctions imposed by resolution 661 (1990) were unparalleled in the history of the United Nations. They were so all-encompassing, so complete, that in effect they represented a double standard from the Security Council. Throughout its history, the Council had never done anything similar, even when there were invasions of small countries by major powerful neighbours or when foreign territories had been occupied without the Council’s feeling obliged even to consider Chapter VII. Panama and Grenada can be invaded by a powerful neighbour without the Council even considering any kind of sanctions. Southern Lebanon can continue to be occupied. Many other such cases might come to anyone’s mind”). See also the statement by Prime Minister Veiga, of Cape Verde at the Council’s Summit Meeting: S/PV.3046 (31 January 1992), p. 79 (“The Council, in addressing aggression and illegal occupation, must be even-handed. Whenever a selective approach is taken in this respect, it necessarily damages the Council’s credibility and substantially weakens its moral authority. Equally damaging to the Council’s credibility is what could be perceived to be selective implementation of its resolutions”).

⁴⁴ S/PV.4833 (24 September 2003), 9 (statement by the Minister for Foreign Affairs of Mexico: “[F]or the sake of justice and the rule of law, the Security Council must continue to act on the bases of legality that provide support for its mandate”).

⁴⁵ S/PV.4833 (24 September 2003), 22 (statement by the Minister for Foreign Affairs of Chile: “One of the areas in which the Council can make a contribution to the rule of law and international justice is that of sanctions imposed pursuant to Chapter VII. It is necessary to reduce to a minimum the negative impact which economic sanctions can have on innocent civilian populations and to address the issue of the adverse impact of sanctions on third countries”).

model of the rule of law which is designed to prevent and reduce the abuse of power. The model also gathers together some of the other threads that emerge from the sources noted above, proposing five basic elements which are generally present in any system that seeks to prevent or reduce the abuse of power. Those elements are transparency, consistency, equality, due process and proportionality.

The concept of the rule of law proposed here should be differentiated from the issue of legality, as the rule of law is considered to be a matter of process rather than of substance. One example of how this rule of law-based approach might differ from a legality-based approach is a hypothetical situation in which the law bestows unlimited power upon a particular actor. According to a formalistic, legality-based approach, that actor might technically be authorized to undertake actions that amount to a misuse or abuse of that power. In such an instance, a simple inquiry into the issue of legality would likely conclude that there is no illegality, for the acts at issue were “authorized”. According to the rule of law approach being proposed here, however, despite the fact that formal legality might technically be assured, the question of abuse of power could nevertheless be explored. A key principle of the rule of law is that no actor is above the law. The corollary of that principle is that no actor can be granted unrestricted power. Thus in the hypothetical example just explored, a rule-of-law-based enquiry would likely conclude that an abuse of power did in fact take place and that the rule of law was thus undermined.

In the context of Security Council action, the rule of law cuts both ways. On the one hand, the Council may strengthen or reinforce the rule of law by preventing or reducing the misuse or abuse of power by other actors within its sphere of competence – whether in a domestic context (generally in national, post-conflict environments) or on the international

plane. On the other hand, the key to the Council's potential to promote the rule of law lies in its own relationship with power. In order to ensure that its actions genuinely promote the rule of law, the Council should ensure that its own extraordinary powers are not themselves susceptible to misuse or abuse. This thesis focuses upon this aspect of the Security Council's relationship with the rule of law.

The basic model of the rule of law proposed here consists of five key principles which seek to prevent the abuse of power: transparency, consistency, equality, due process and proportionality. These principles, which are interrelated but distinct,⁴⁶ exist in systems which respect and promote the rule of law. Thus, to the extent that they are evident in the U.N. sanctions system, that system can be said to reinforce and strengthen the rule of law.

i. Transparency

The principle of transparency requires that in the exercise of power, decision-making should be open and transparent. The reasoning leading to a particular decision should therefore be apparent to those affected by the ultimate decision. Moreover, it should be clear that power is exercised in accordance with legitimate authority. In the context of U.N. sanctions, transparency requires that the Security Council's decision-making process is open and transparent.

ii. Consistency

The principle of consistency requires that power be exercised in a consistent manner. Decisions should thus be made in a predictable rather than an arbitrary manner.

⁴⁶ Thus for example, where the requirements of transparency are routinely satisfied, it is likely that the demands of consistency will be fulfilled. It is possible, however, that the requirements of transparency might be satisfied, yet in an inconsistent manner. It is also possible, of course, that the exercise of power might be absolutely consistent, yet consistently non-transparent.

Consistency contributes to the rule of law by promoting standards of behaviour. In the context of U.N. sanctions, the principle of consistency requires that the Security Council should seek to ensure, to the extent possible, that its practice is consistent from one sanctions régime to another.

iii. Equality

The principle of equality requires that all parties over whom power is wielded are considered equal before that power and that any decisions affecting the rights, entitlements and obligations of those parties are made in a consistent manner. In a political context, one method of achieving equality is to provide all parties with the opportunity to elect their leaders, thus providing democratic representation. In the context of U.N. sanctions, equality requires that if sanctions are imposed against one State in a given set of circumstances, then they should be applied against other parties in a similar set of circumstances. It also requires that the Security Council itself be democratically representative of the broader U.N. membership and that all of its members have the opportunity to stand for election to the Council.

iv. Due Process

The principle of due process requires that parties against which coercive power is proposed to be exercised should be given a fair hearing and granted the opportunity to express their point of view regarding the potential decision. In the context of U.N. sanctions, the principle of due process requires that States, non-State actors and individuals against which coercive measures are to be applied should be afforded the possibility to present their version of events and, in the case of individuals, to be presumed innocent until proven guilty.

v. *Proportionality*

The principle of proportionality requires that the consequences of a decision affecting the rights, entitlements and obligations of other parties are proportional to the harm caused by that party and consistent with the overall objectives for which the decision is being taken. In the context of sanctions, proportionality requires that the coercive consequences of the application of sanctions, which may be felt by civilian populations, third States or individuals, remain in proportion to the harm caused by the target against which sanctions are imposed and are consistent with the objectives for which sanctions were employed. The adverse effects of sanctions upon innocent civilian populations and third States should thus be minimised.

2.3.2 A framework for subsequent analysis

Based upon the model of the rule of law proposed above, in order to possess maximum potential to reinforce the rule of law, the Security Council's sanctions powers should be employed in such a manner that power is exercised in accordance with principle rather than politics. In order to be certain that the Council's considerable sanctions powers are not susceptible to abuse, sanctions should be applied with maximum respect for the key elements of the rule of law noted above. This thesis thus aims to ascertain the extent to which the U.N. sanctions system respects and promotes those five key elements of the rule of law. If U.N. sanctions have indeed promoted the elements of transparency, consistency, equality, due process and proportionality, then they have reinforced and strengthened the rule of law. In order to lay the groundwork for a critical analysis of the extent to which the Security Council's sanctions practice has respected and promoted the core elements of the rule of law, discussion will now turn to the evolution of the U.N. sanctions system.

PART II. THE ORIGINS OF THE U.N. SECURITY COUNCIL'S SANCTIONS POWERS

Part II explores the origins of the Security Council's sanctions powers, tracing the path leading to the enshrinement of the Security Council's sanctions powers in the United Nations Charter. Chapter 3 describes the "pre-history" of U.N. sanctions, surveying historical precedents in international relations for the employment of non-military coercive strategies as a means of compelling the resolution of international disputes, and touching upon the sanctions experience of the U.N.'s predecessor - the League of Nations. Chapter 4 illustrates how U.N. sanctions were designed to operate in theory, outlining the legal framework for the Security Council's use of sanctions.

3. *From Aegina to Abyssinia: a prehistory of U.N. sanctions*

Although the framework for collective international security created by the founders of the United Nations in San Francisco in 1945 represented a ground-breaking development in the endeavour to restrict the ability of states to resort to force,¹ the idea of non-military international sanctions was not novel. The measures of non-military coercion placed at the disposal of the U.N. Security Council under Article 41 of the U.N. Charter may never have been grouped together as part of such a comprehensive system of collective international security, however precedents did exist in international relations² for most of the forms of non-military coercion envisaged by Article 41.³ Just a generation earlier the concept of collective non-military sanctions had also featured in the thinking of the founders of the League of Nations, who had engaged in the international community's first genuine attempt at collective security through international organisation.⁴ The Covenant of the League of

¹ The U.N. Charter went further than previous attempts to collaborate to preserve international peace. Its predecessor, the League of Nations, had itself broken ground, improving upon the *laissez-faire* "balance of power" arrangements that had preceded it under the Concert of Europe by attempting to limit the ability of member states to resort to war. The U.N.'s framework for collective security went beyond this by attempting to restrict the general use of force against another state's territory, whether it amounted to an act of war or not: see U.N. Charter, Article 2(4).

² The term "international relations" as it is used here is not restricted to the relations between states as conceptualised by the post-Peace of Westphalia international system. It also embraces the historical relations between quasi-state entities which were considered to be sovereign and independent in the pre-Westphalian world. Many quasi-states resembled contemporary states, possessing similar characteristics. Some, however, were smaller entities which would now be considered principalities, districts or cities. Examples include the "city-states" of ancient Greece and the "sovereign principalities" of medieval Europe.

³ As discussed above in Chapter 1, the term "U.N. sanctions" is used here to represent the range of measures provided for in Article 41 of the U.N. Charter. These measures short of the use of armed force include, but are not restricted to, economic, transport, communications and diplomatic sanctions. For discussion of the legal basis for U.N. sanctions, see Chapter 4. For discussion of the potential scope of U.N. sanctions, see Chapter 7.

⁴ Collective security is considered to be a product of the twentieth century. Although precedents had existed for collaborative arrangements in international relations, such

Nations, which established a framework for collective security through the League, contained an Article providing for the application of non-military sanctions against a State which resorted to war.⁵ But the evolution of U.N. non-military sanctions began well before even the League of Nations sanctions experiment. In fact, the notion at the core of U.N. sanctions - that coercive measures short of force can be adopted in order to compel the resolution of international disputes - has influenced decision-making in the arena of international relations and developments in the sphere of international law for countless generations.⁶

arrangements were characterised as falling under the category of a balance of power arrangement, rather than as a centralised attempt at collective security. Examples of pre-twentieth century balance of power arrangements can be found in the alliances that arose after the Peace of Westphalia, and after the Congress of Vienna. See: Lorenz, Joseph P., *Peace, Power and the United Nations* (1999) Westview Press, Boulder, CO, 10-16; Larus, Joel (ed.), *From Collective Security to Preventive Diplomacy* (1965) John Wiley, NY, intro, 1-8.

⁵ For further details relating to the League's sanctions provision, see section 3.3, below.

⁶ Historically a debate raged between international law commentators as to whether the relations which existed between pre-Westphalian communities could legitimately be studied as the subject of international law. For an example of the view that pre-Westphalian international relations did not give rise to genuine international law, see: Oppenheim, L., *International Law; a Treatise*, below note 21, Vol. I, 3-4 ("International Law in the meaning of the term as used in modern times did not exist during antiquity and the first part of the Middle Ages. It is in its origin essentially a product of Christian civilisation, and began gradually to grow from the second half of the Middle Ages"). Oppenheim does subsequently acknowledge, however, that "the roots of [international] law go very far back into history". See *ibid* 44. For examples of the view that relations between quasi-state entities dating from pre-Westphalian times gave rise to a form of international law, see: Verosta, Stephan, 'International Law in Europe and Western Asia between 100 and 650 A.D.' (1964) 113 *Recueil des Cours* 485-617, 491 ("There is no doubt that from the earliest periods of international relations between sovereign political units ... a body of rules of a general law of nations can be traced showing all the characteristics of international law"); Phillipson, Coleman, *The International Law and Custom of Ancient Greece and Rome* (1911) Macmillan, London, vol 1, 60 ("That the ancients possessed a complete system of international law no one can justifiably assert. That they possessed important elements thereof which contributed greatly to subsequent juridical evolution is undeniable"); Korff, Baron S.A., 'An Introduction to the History of International Law' (1924) 18 *AJIL* 246-59, 258 ("international law is as old as human civilization in general").

3.1 International coercion short of force in ancient and medieval Times

States and quasi-state entities have employed a variety of non-military coercive strategies as a means of pursuing foreign policy objectives since at least the days of ancient Greece.⁷ In 492 B.C. the Greek city-state Aegina took non-military coercive action against Athens by seizing an Athenian ship and holding its passengers hostage.⁸ The action was taken in retaliation for the refusal of Athens to release ten Aeginetan citizens whom it was holding captive.⁹ Just over half a century later, in 432 BC, Athens itself took non-military coercive action by imposing a ban upon the importation of products from Megara.¹⁰ The aim of the action was ostensibly to secure the release of three Athenian women who had been kidnapped.¹¹ These two incidents provide early examples of non-military coercive strategies

⁷ Unfortunately, no comprehensive history exists as yet of the precursors of U.N. sanctions. For useful, if brief, contemporary discussion of the history of economic sanctions, see: Hufbauer, Gary Clyde, Schott, Jeffrey J. & Elliott, Kimberly Ann, *Economic Sanctions Reconsidered* (1985), Institute for International Economics, Washington DC, 4; Ellings, Richard, *Embargoes and World Power* (1985) Westview Press, Boulder, CO, 17-18; Simons, Geoffrey L., *Imposing economic sanctions: legal remedy or genocidal tool?* (1999) Pluto Press, London, 13-16. For earlier discussions of the use of force short of war in international relations see: Hindmarsh, Albert E., *Force in Peace: Force short of war in international relations* (1933) Kennikat Press, London; Wild, Payson S., *Sanctions and Treaty Enforcement* (1934) Harvard UP, Cambridge Mass.; Royal Institute of International Affairs, *Sanctions: the Character of International Sanctions and their Application* (1935) OUP, New York; Colbert, Evelyn S., *Retaliation in International Law* (1948) King's Crown Press, NY.

⁸ Phillipson, *The International Law and Custom of Ancient Greece and Rome*, above note 6, vol. 2, 354.

⁹ *Ibid.*

¹⁰ Many economic sanctions commentators point to this episode as the earliest recorded instance of economic sanctioning: see, e.g., Hufbauer, Schott, & Elliott, *Economic Sanctions Reconsidered*, above note 7, 4, 21; Doxey, Margaret P., *International Sanctions in Contemporary Perspective* (2nd ed. 1996) St. Martin's Press, NY, 3; Renwick, Robin, *Economic Sanctions* (1981) Center for International Affairs, Cambridge, MA, 1.

¹¹ Hufbauer et al speculate, however, that the motives underlying the Athenian action may have been more complex than the simple release of the women, as Athens soon began to wage war upon Megara: *ibid* 4.

that have continued to play a role in international relations right up to the contemporary era.¹²

Throughout the ancient and medieval eras states and quasi-states employed a range of non-military coercive strategies as part of their foreign policy. These strategies included: conducting diplomatic relations with another state in a less than courteous manner;¹³ authorising the seizure of property belonging to another state or its citizens;¹⁴ authorising the kidnapping of citizens of another state;¹⁵ and placing a maritime blockade upon the flow of

¹² The tool of unilateral economic sanctions represents an obvious contemporary parallel of the boycott imposed against Megara by Athens. A contemporary parallel of Aegina's action might be viewed in the strategy employed by Iran, under the leadership of the Ayatollah Khomeini, of taking hostage US consular workers. Although the strategy was illegal, as confirmed unanimously by the International Court of Justice, it nevertheless represented a form of non-military coercion which had the aim of forcing the US to relinquish Mohammad Reza Pahlavi, the former Shah of Iran, to whom the US had granted asylum. For the International Court's judgment on the merits, see: *United States Diplomatic and Consular Staff in Tehran*, Judgment, [1980] ICJ Rep. 3. For a critical discussion of the manner in which international law operated in the case of the Iran hostages crisis, see: Falk, Richard, 'The Iran Hostage Crisis: Easy Answers and Hard Questions' (1980) 74 *AJIL* 411-17.

¹³ The Roman and Persian empires sometimes employed the strategy of registering dissatisfaction with the other power by failing to notify the other power upon the installation of a new leader: Verosta, 'International Law in Europe and Western Asia between 100 and 650 A.D.', above note 6, 521 (noting that during periods of strong rivalry, "the omission of the usual notification of the ascension to the throne of the wronged state could be used as a diplomatic demonstration of the tension existing between the two great powers").

¹⁴ In 1567 Portugal confiscated English property within its jurisdiction, in response to a raid that had been led by an English national, George Fenner, against Santiago in the Cape Verde Islands: see Livermore, H.V., *A New History of Portugal* (1966) Cambridge UP, Cambridge, 156. In 1569 Queen Elizabeth of England authorised two English citizens and their agents to seize property belonging to the King of Portugal or any Portuguese citizens in order to compensate them for the loss of their ship, which had been sunk by the Portuguese armada in 1565: see Clark, Grover, 'The English Practice with Regard to Reprisals by Private Persons' (1933) 27 *AJIL* 694-723, 717-20.

¹⁵ One example of this was the retaliatory action taken by Aegina against Athens: see note 8 and accompanying text, above. A specific measure of retaliation by kidnapping, termed *androlepsia*, evolved in ancient Athens itself. If an Athenian citizen had been unjustly murdered in another state and that state refused to punish the murderer, then the relatives of the victim were authorised under Athenian law to seize three citizens of that state and to hold them until restitution was made or the murderer surrendered: see Phillipson, *The International Law and Custom of Ancient Greece and Rome*, above note 6, vol 2, 349-50. In 1414, in a medieval example of state-sanctioned kidnapping, Henry V authorised an English citizen, William Waldern, whose shipment of wool had been illegally seized in Genoan waters, to capture Genoan citizens and hold them until full restitution was paid for their shipment: Clark, Grover, *ibid* 713-4.

goods to and from another state.¹⁶ These non-military measures were generally applied by individual states or quasi-states, but on occasion groups of states or quasi-states did co-operate in an attempt to apply international coercion.¹⁷

3.2 International coercion short of force under classic international law

By the end of the nineteenth century states commonly employed a number of non-military coercive strategies in their foreign relations. Classic international law,¹⁸ which sought to reflect and to guide state practice in international relations, recognised the right of states to employ these non-military coercive measures in certain circumstances. In an era when states reserved the freedom to resort to war as the ultimate means of settling differences,¹⁹ non-

¹⁶ The Athens/Megara episode, outlined above in note 10 and accompanying text, is one example of this. Another example is the commercial blockade imposed by Venice against Bologna during the 1270s in order to coerce Bologna into purchasing the majority of its wheat from Venice rather than from Ravenna, its traditional wheat provider: see Lane, Frederic C., *Venice: A Maritime Republic* (1973) The Johns Hopkins UP, Baltimore, 59.

¹⁷ During the medieval Christian crusades Popes and church councils passed decrees prohibiting Christian nations from selling to the Saracens any arms, ships, lumber for ship construction, or other goods useful in warfare: Nussbaum, Arthur, *A Concise History of the Law of Nations* (2nd ed.: 1954) Macmillan, New York, 20. The Hanseatic League also employed a collective system of trade boycotts against foreign adversaries during the fourteenth and fifteenth centuries. From 1385-92 the Hanseatic League applied such a boycott against the Russian principality of Novgorod: Nussbaum, *ibid* 59.

¹⁸ The era of classic international law is generally considered to have begun with the peace of Westphalia in 1648 and to have ended with the outbreak of WWI. The nineteenth century represented the culmination of the age of "classic international law": see, e.g., Kennedy, David, 'International Law and the Nineteenth Century: History of an Illusion' (1996) 65 *Nordic Journal of International Law* 385-420, 397 ("The broad period from 1648 to 1914 is remembered primarily for the developments in legal philosophy which refined this [international] state system until their culmination in the classic synthesis of the late nineteenth century").

¹⁹ Although war was considered to be an undesirable and regrettable state of affairs, it was nevertheless regarded as an inevitable phenomenon that classic international law was powerless to prevent in a world of sovereign states. Lawrence and Westlake represent typical views of the period on the relationship between international law and war: Lawrence, T.J., *The Principles of International Law* (1923: 7th ed.) D.C. Heath & Co., Boston, 311 ("To [international law] war is a fact that alters in a variety of ways the legal relations of all the parties concerned ... [I]t does not pronounce upon the moral questions that occupy such a large space in the writings of the early publicists. Grotius, for instance ... devotes several chapters to an attempt to distinguish between just and unjust causes of war. Such matters as these are supremely important; but they belong to morality and theology, and are as much out of place in a treatise on International Law as would be a discussion on the ethics of marriage in

military coercive measures were considered to form a valuable tool of foreign policy, with the potential both to deter other states from waging war and to compel them to resolve disputes that could not be resolved by other means.

International law classified the nineteenth century precursors of U.N. non-military sanctions as “measures of constraint short of war”.²⁰ The legal character of these coercive measures short of war was complicated. Although generally employed against states with which one was technically considered to be at peace, coercive measures short of war were sufficiently aggressive in character that international law treatises located them in a grey area between the laws of peace and the laws of war.²¹

a book on the law of personal status”); Westlake, John, *International Law*, below note 21, Vol. II, 3 (“International law did not institute war, which it found already existing, but regulates it with a view to its greater humanity”).

²⁰ Hall, William E., *A Treatise in International Law* (1909: 6th ed.; edited by Atlay, J.B.) Clarendon Press, Oxford, 360-9. Among the variations on this phrase adopted by other commentators are “forcible measures short of war” [Walker, Thomas Alfred, *A Manual of Public International Law* (1895) University Press, Cambridge, 94; Wheaton, Henry, *Elements of International Law* (1904: 4th ed.; edited by Atlay, J.B.), Stevens & Sons, London, 411-16; Westlake, John, *International Law*, below note 21, Vol. II, 1], “force short of war” [Hindmarsh, *Force in Peace: Force short of war in international relations*, above note 7], “compulsive means of settlement of state differences” [Oppenheim, L., *International Law; a Treatise*, below note 21, Vol. II, 29], “measures of redress short of war” [Butler, Geoffrey & Maccoby, Simon, *The Development of International Law* (1928) Longmans, Green & Co, London, 173], and “methods of applying force which are held not to be inconsistent with the continuance of peaceful relations between the powers concerned” [Lawrence, *ibid* 311].

²¹ Classic international law treatises tended to divide their analyses of international law into two main sections: one describing the “laws of peace” and the other outlining the “laws of war”: see, e.g., Oppenheim, L., *International Law; a Treatise* (1905) Longmans, Green & Co, London, 2 vols (Vol. I: *Peace*; & Vol. II: *War and Neutrality*); Westlake, John, *International Law* (1913: 2nd edition) Cambridge UP, Cambridge, 2 vols (Vol. I: *Peace*; & Vol. II: *War*). The laws of peace incorporated principles applicable to intercourse between states in times of peace, such as those relating to statehood, territorial rights, diplomatic relations and treaties. The laws of war, on the other hand, addressed the questions of how war was declared, who was invested with the power to declare war, and what rules should apply between states (including those who claimed neutrality) once war had been declared. The ambiguous nature of coercive acts short of war is illustrated by the fact that most treatises located them within their section on the laws of war. See, e.g., Von Martens, G.F., *Compendium of the Law of Nations* (1802) Corbett & Morgan, London, 271-7; Wheaton, *Elements of International Law* (1904: 4th ed.), *ibid* 411-16; Oppenheim, *ibid*, Vol. II: *War*, 29-51; Westlake, *ibid*, Vol. II, 1-19; Lawrence, *ibid* 311-20; Wheaton, Henry, *Wheaton's International Law* (1944: 7th ed.; edited by Keith, A. Berriedale) Stevens & Sons, London, 90-98. For examples of treatises which locate coercive measures

According to classic international law doctrine, when a state was party to a dispute which stemmed from the initial hostile act of another state and which could not be resolved by non-coercive means,²² it was permitted to take retaliatory action in the form of certain coercive measures short of warfare in an attempt to compel a resolution of the dispute.²³ Among the coercive measures short of war that a state might employ were retorsion, reprisals and pacific blockade.²⁴

3.2.1 Retorsion

Retorsion consisted of a response to an initial action that was technically legal but nevertheless hostile in nature.²⁵ It generally involved a response which was either identical or

short of force within the section on the laws of peace see: Walker, *ibid* 94-101; Hall, *ibid* 360-69.

The confusion evident in classic international law regarding whether coercive measures short of war formed a part of the laws of peace or of the laws of war foreshadowed the contemporary uncertainty as to whether U.N. sanctions should be considered to fall within the purview of international human rights law or international humanitarian law, or both, or neither. A common complaint of anti-sanctions activists is that there is a logical inconsistency in international law if it places restrictions upon the ability of warring parties to target civilians under international humanitarian law, but does not similarly restrict the ability of U.N. sanctions to target civilians because sanctions are not technically considered to be a measure of warfare.

²² See, e.g., Oppenheim, *ibid*, Vol. II, 41 (“[A]ll ... compulsive means of settling international differences ... are admissible only after negotiations have been conducted in vain for the purpose of obtaining reparation from the delinquent State”).

²³ Wheaton, *Elements of International Law* (1904: 4th ed), above note 20, 411 (“Every State has ... a right to resort to force, as the only means of redress for injuries inflicted upon it by others”).

²⁴ Nineteenth-century commentators on international law sometimes differed in the manner in which they used the terms retaliation, retorsion and reprisals. The most common confusion surrounded the definition of, and relationship between, retaliation and retorsion, but there was also a significant degree of difference over the characteristics of all three categories, regardless of the usage adopted. The approach adopted here is to treat “retaliation” as a broad term encompassing all of the non-military coercive measures permissible under international law and to treat “retorsion” and “reprisals” as terms with more specific meaning. For discussion of the different terminological approaches, see: Colbert, *Retaliation in International Law*, above note 7, 1-2.

²⁵ Oppenheim, *International Law; a Treatise*, above note 21, Vol. II, 31 (“Retorsion is the technical term for the retaliation of discourteous or unkind or unfair and inequitable acts by acts of the same or a similar kind”); Hindmarsh, *Force in Peace*, above note 7, 57 (“Measures of retorsion [are] those evidences of unfriendly feeling which are not in themselves violative of rules or principles of international law”).

closely analogous to the initial hostile act.²⁶ Examples of the type of action taken as part of retorsion included imposing higher trade tariffs upon goods imported from or exported to the other state²⁷ and restricting the legal rights of citizens of the other state who were within the territorial jurisdiction of one's own state.²⁸

3.2.2 Reprisals

Reprisals consisted of coercive action that was *prima facie* illegal, but which was considered justified if it responded to an initial illegal act.²⁹ Unlike retorsion, reprisals could

²⁶ Oppenheim, *ibid* 33 ("The essence of retorsion consists in retaliation for a noxious act by an act of the same kind. But a State in making use of retorsion is by no means confined to acts of the same kind as those complained of, acts of a similar kind being equally admissible"); Hall, *A Treatise in International Law*, above note 20, 360 ("[Retorsion] consists in treating the subjects of the state giving provocation in an identical or closely analogous manner with that in which the subjects of the state using retorsion are treated").

²⁷ One example of this type of retorsion occurred in 1885 when the Bismarck regime, responding to what it perceived to be unfair customs policies on the part of Russia, forbade the Reichsbank from making advances on the security of Russian state loans: Hindmarsh, *Force in Peace*, above note 7, 58. Japan also applied this type of retorsion against Russia in 1904, prior to the Russo-Japanese war. Russia had introduced regulations excluding Japanese fisherman from Russian waters, and in response Japan threatened to impose differential duties on Russian imports: Wheaton, *Wheaton's International Law* (1944: 7th ed.) above note 21, 91.

²⁸ Hall, *A Treatise in International Law*, above note 20, 360 ("[I]f the productions of a particular state are discouraged or kept out of a country by differential import duties, or if its subjects are put at a disadvantage as compared with other foreigners, the state affected may retaliate upon its neighbours by like laws and tariffs"); Oppenheim, *International Law; a Treatise*, above note 21, Vol. II, 32 ("In practice States have frequently made use of retorsion in cases of unfair treatment of their citizens abroad through rigorous passport regulations, exclusion of foreigners from certain professions, and in the cases of the levy of exorbitant protectionist or fiscal duties, of refusal of the usual mutual judicial assistance, of refusal of admittance of foreign ships to harbours, and in similar cases").

²⁹ Oppenheim, *ibid* 34 ("[R]eprisals are otherwise illegal acts performed by a State for the purpose of obtaining justice for an international delinquency by taking the law into its own hands"). The type of reprisals discussed here is sometimes referred to as "public" or "general" reprisals. They are reprisals taken by or on behalf of the state as a whole, rather than for the benefit of particular individuals. Where action was authorised for the benefit of individuals who had suffered legal loss, the reprisals were termed "private" or "special". Private reprisals, which had fallen into disuse by the eighteenth century, were once available to a private citizen who had been the victim of a legal wrong committed in another city, principality or state. In such a case the relevant authority in the victim's home city, principality or state could issue "letters of marque and reprisal", authorising the aggrieved individual, or agents on that individual's behalf, to seize goods belonging to the original perpetrator of the wrong (or even goods belonging to the perpetrator's fellow citizens) to a value equivalent to the amount necessary to redress the legal harm suffered. For general discussion of "private reprisals" see: Clark, Grover, 'The English Practice with Regard to Reprisals by Private Persons', above note 14; Colbert,

consist of a response that was not necessarily in-kind or analogous to the initial hostile act,³⁰ but international law nevertheless required that reprisals be neither disproportionate nor excessive.³¹ The most common form of reprisals involved the appropriation of property belonging to the other state or its nationals.³² Such property could be detained whilst in the waters or ports of the state imposing the reprisals,³³ or it could be seized on the high seas by the reprising state's navy or by ships authorised to participate in the reprisals.³⁴ Another

Retaliation in International Law, above note 7, 9-42; Hindmarsh, *Force in Peace*, above note 7, 43-56.

³⁰ Oppenheim, *ibid* 34 ("Whereas retorsion consists in retaliation of discourteous, unfriendly, unfair, and inequitable acts by acts of the same or a similar kind ... reprisals are otherwise illegal acts performed by a State for the purpose of obtaining justice for an international delinquency by taking the law into its own hands. It is, of course, possible that a State retaliates to an illegal act committed against itself by the performance of an act of a similar kind. Such retaliation would be a retorsion in the ordinary sense of the term, but it would not be retorsion in the technical meaning of the term as used by those writers on International Law who correctly distinguish between retorsion and reprisals").

³¹ Hall, *A Treatise in International Law*, above note 20, 363 ("To make reprisals either disproportioned to the provocation, or in excess of what is needed to obtain redress, is to commit a wrong"); Oppenheim, *ibid* 38 ("Reprisals ... must be in some proportion to the wrong done and to the amount of compulsion necessary to get reparation").

³² Westlake, *International Law*, above note 21, Vol II, 7-8 ("Reprisals ... may be defined as the taking possession, at sea or on land, of the ships or other property of a foreign state or its subjects"); Clark, Grover, 'The English Practice with Regard to Reprisals ...', above note 14, 702 (stating that reprisals involve "the use of force to secure compensation for a loss by the taking of property"). Oppenheim, however, did not consider reprisals to be limited to the seizure of property: Oppenheim, *ibid* 38 ("An act of reprisal can be performed against anything and everything that belongs or is due to the delinquent State or its citizens. Ships sailing under its flag may be seized, treaties concluded with it may be suspended, a part of its territory may be militarily occupied, goods belonging to it or its citizens may be seized, and the like").

³³ The technical term for detaining foreign ships or other property located in one's jurisdiction was "embargo". A distinction was sometimes drawn between this type of action, known as a "hostile embargo" because it involved the detention of foreign shipping and property, and a "civil embargo", which involved the effective detention of ships of one's own nationals by means of prohibiting them from sailing to specified destinations: see, e.g., Hindmarsh, *Force in Peace*, above note 7, 64; Wheaton, *Wheaton's International Law* (1944: 7th ed.) above note 21, 92-3.

³⁴ Westlake notes that the technical difference between reprisals and embargo (which he nevertheless considers to form a sub-category of reprisals) is that embargo represents detention and reprisals represent capture: Westlake, *International Law*, above note 21, Vol II, 8.

form of reprisal was to prohibit the ships of one's own nationals from sailing for the state which had taken the initial hostile action.³⁵

3.2.3 Pacific Blockade

The pacific blockade evolved in the nineteenth century as an alternative measure of coercion short of war.³⁶ Sometimes imposed as a measure of reprisal and sometimes employed as a tool of third-party intervention,³⁷ a pacific blockade was deemed to exist when a state or group of states blockaded the coasts or ports of the other party to the dispute during a period when relations with the blockaded state were technically considered

³⁵ This action was sometimes referred to as a "civil embargo": see note 33, above. The U.S., under the presidency of Thomas Jefferson, implemented a civil embargo in 1807 to prevent US vessels from leaving US waters. The aim of the embargo was to place pressure upon the UK and France, then at war with one another, to cease hostilities. See Sears, Louis M., *Jefferson and the Embargo* (1927) Duke UP, Durham, N.C.; Hindmarsh, *Force in Peace*, above note 7, 66-70.

³⁶ Prior to the nineteenth century international law had considered any use of the measure of blockade to constitute an act of warfare. By the end of the nineteenth century, however, the consensus among international law commentators was that the usage of the blockade during "peaceful" relations had become so widespread that international law could no longer credibly confine the use of blockade exclusively to periods of war. For discussion of the earlier debate between commentators as to whether pacific blockade should be recognised as a permissible measure of coercion short of war, see: L'Institut de Droit International, 'Rapport de M. Perels sur le blocus pacifique' (1888) 9 *L'Annuaire de L'Institut de Droit International* 276-86, 280-83; Hogan, Albert E., *Pacific Blockade* (1908) Clarendon Press, Oxford, 21-31.

Most commentators trace the earliest example of "pacific blockade" to 1827, when Great Britain, France and Russia imposed a blockade against Turkish troops occupying Greece [see, e.g., Hogan, *ibid* 14, 29; Oppenheim, *International Law; a Treatise*, above note 21, Vol. II, 43; Westlake, *International Law*, above note 21, Vol. II, 11; Bertram, Anton, 'The Economic Weapon as a Form of Peaceful Pressure' (1932) 17 *Problems of Peace and War (Grotius Society Papers)* 139-74, 157]. Hindmarsh and Keith, however, cite an incident from 1814 as the first example of pacific blockade [Hindmarsh, *ibid* 72; Wheaton, *Wheaton's International Law* (1944: 7th ed.) above note 21, 96 (referring to an instance of "pacific blockade" perpetrated by English and Swedish ships against Norwegian ports in 1814)]. Colbert notes that the pacific blockade originated early in the nineteenth century, but she considers the first retaliatory pacific blockade to have been imposed in 1831: Colbert, *Retaliation in International Law*, above note 7, 61.

³⁷ Oppenheim, Hogan and Hindmarsh all consider pacific blockade to be a tool which could be applied as an act either of reprisal or of third-party intervention: Oppenheim, *ibid* 48; Hogan, *ibid* 19; Hindmarsh, *ibid* 72-3.

to be peaceful.³⁸ The legal elements of pacific blockade were similar to those of belligerent blockade,³⁹ as international law required that for any blockade to be considered genuine the blockading state must notify the target state of its intent to blockade, and it must be capable of imposing the blockade.⁴⁰ A major difference between the pacific blockade and belligerent blockade, however, was that whereas in a belligerent blockade the blockading state was within its rights to bar all shipping between the blockaded state and the external world,⁴¹ a state imposing a pacific blockade was considered not to possess the right to restrict the shipping of third-party states.⁴²

³⁸ L'Institut de Droit International, 'Rapport de M. Perels sur le blocus pacifique', above note 36, 277 ("Le blocus pacifique n'est autre chose que la fermeture des ports ou de districts particuliers de la côte d'un pays, en dehors du cas de guerre déclarée et dans le but d'empêcher les relations commerciales maritimes." This can be translated as "The pacific blockade consists of no other thing than the closure of ports or of particular parts of the coast of a nation during a period in which war has not been declared and with the goal of interrupting maritime commercial relations"). This report, made on behalf of a special commission of the Institute that was charged with the task of studying the law relating to the application of blockades in times of peace, was considered authoritative as the Institute included within its membership many of the most eminent international law scholars and diplomats of the day.

³⁹ On blockade under classic international law in general, see: Oppenheim, *International Law; a Treatise*, above note 21, Vol II, 398-419; Hall, *A Treatise in International Law*, above note 20, 695-714; Westlake, *International Law*, above note 21, Vol. II, 255-76. For discussion of how the law of blockade might be applied in the contemporary context, given the advance of maritime and military technology, see: Fraunces, Michael G., 'The International Law of Blockade: New Guiding Principles in Contemporary State Practice' (1992) 101 *Yale L.J.* 893-918; Jones, Thomas David, 'The International Law of Maritime Blockade -- A Measure of Naval Economic Interdiction' (1983) 26 *Howard Law Journal* 759-79.

⁴⁰ *Declaration of Paris (1856)*, paragraph 4 ("Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy"); L'Institut de Droit International, 'Rapport de M. Perels sur le blocus pacifique', above note 36, 286 ("Le blocus pacifique doit être déclarée et notifié officiellement, et maintenu par une force suffisante", which can be translated as "Pacific blockade must be declared and notified officially, and maintained by a sufficient force").

⁴¹ Oppenheim, *International Law; a Treatise*, above note 21, Vol. II, 399 ("Although blockade is ... a means of warfare against the enemy, it concerns neutrals as well, because the ingress and egress of neutral vessels are thereby interdicted and may be punished"), 400 ("Blockade as a means of warfare is admissible only in the form of a *universal* blockade. If the blockading belligerent were to allow the ingress or egress of one nation, no blockade would exist").

⁴² L'Institut de Droit International, 'Rapport de M. Perels sur le blocus pacifique', above note 36, 277 ("Les navires de pavillons neutres peuvent entrer librement malgré le blocus", which can be translated as "the ships of neutral parties can freely enter [the blockaded state's waters] despite the blockade"); Hall, *A Treatise in International Law*, above note 20, 367 ("It is only under the supreme necessities of war, when the gain or loss of belligerent states is wholly out

3.2.4 The possibilities and limitations of coercive measures short of war under classic international law

Under the classic international law system coercive measures short of war functioned at best as a means for enforcing international law. In the ideal scenario such measures would be employed by a state with a genuine grievance and they would force the state against which they were employed to address that grievance. The timely employment of coercive measures short of war might therefore ensure the resolution of international disputes and prevent the outbreak of war. When employed in the manner envisaged by classic international law, coercive measures short of war could thus constitute genuine sanctions that were imposed in response to violations of international law.

In practice, however, coercive measures short of war constituted a means of self-help that was open to abuse.⁴³ Even in those cases where states may have wanted to apply coercive measures in accordance with the dictates of classic international law, their ability to engage in effective reprisals was contingent upon size and strength.⁴⁴ In reality, small states were far less likely to engage in, and far more likely to fall victim to, non-military coercive measures than large, powerful states.⁴⁵ Furthermore, even if the states which were party to a dispute were evenly-balanced, and even if the state imposing coercive measures short of war acted within the letter of classic international law, the state against which the measures

of proportion to the loss inflicted upon neutral individuals, that other states can be reasonably asked to forego their right of intercourse with the enemy”).

⁴³ Oppenheim, *International Law; a Treatise*, above note 21, Vol. II, 42 (“[T]he institution of reprisals may give and has in the past given occasion to abuse in the case of a difference between a powerful and a weak State”), 48 (conceding that pacific blockade may also be open to abuse).

⁴⁴ Hindmarsh, *Force in Peace*, above note 7, 81 (“These measures have long been the ultimate means, short of war, of enforcing international obligations. They are self-help methods; their application is usually arbitrary and limited in practice to the coercion of small or weak states”).

were imposed was within its rights to interpret the measures as warlike and to respond accordingly.⁴⁶ Ironically, if the state against which the coercive measures short of war were employed chose to treat them as an act of war, then war was deemed to have begun at the moment when the coercive measures were imposed.⁴⁷ Thus a state that acted within the letter of the law and with the aim of resolving a dispute could find itself, by virtue of having implemented coercive measures short of war, as the party responsible for escalating relations to the status of war. Classic international law's coercive measures short of war were a double-edged sword, with the potential to act not just as a means for resolving conflict or enforcing international law but also as a trapdoor to war.

Ultimately the international system of the classic international law era collapsed. Despite concerted initiatives through the Hague Peace Conferences to foster an international community in which the resort to conflict would be minimised, the early twentieth century ushered in a period of unprecedented international conflict. The First World War emphatically sounded the funereal bugle of both the Concert of Europe balance-of-power arrangements and the classic international law era.

⁴⁵ Lawrence, *The Principles of International Law*, above note 19, 321 ("It is true that [reprisals] may be used to inflict injury on small states, and extort from them a compliance with unreasonable demands").

⁴⁶ Hogan, *Pacific Blockade*, above note 36, 27 ("One state can treat as an act of war what was intended by another merely as an embargo or as reprisals"); Lawrence, *ibid* 320 ("The power against which reprisals of any kind are instituted can, if it pleases, resort to war in return").

⁴⁷ Hall, *A Treatise in International Law*, above note 20, 361 ("It of course remains true that reprisals are acts of war in fact, though not in intention, and that ... the state affected determines for itself whether the relation of war is set up by them or not. If it elects to regard them as doing so, the outbreak of war is thrown back by the expression of its choice to the moment at which the reprisals were made").

3.3 Non-military sanctions under the League of Nations System

“The economic weapon, conceived not as an instrument of war but as a peaceful means of pressure, is the great discovery and the most precious possession of the League. Properly organised, it means the substitution of economic pressure for actual war.”⁴⁸

The League of Nations was created at the end of World War I when the Covenant of the League of Nations was signed at Versailles as part of the post-War peace settlement. The Covenant sought to circumscribe the general right of states to resort to warfare by restricting it to action which responded to an initial aggressive act taken by another State in violation of the Covenant itself.⁴⁹ The Covenant further stipulated that the aims of such permitted resorts to war must be the maintenance of right and justice⁵⁰ and the protection of the Covenant of the League of Nations.⁵¹

Non-military sanctions assumed a central enforcement role in the League’s collective security scheme, as they were to be imposed against states that resorted to war in violation of the Covenant. Article 16.1 of the League Covenant provided that:

⁴⁸ Bertram, Anton, ‘The Economic Weapon ...’, above note 36, 169.

⁴⁹ The types of resort to war that would violate the Covenant were spelled out by Articles 12, 13 and 15. Article 12 placed League Member states under an obligation to submit any serious disputes to arbitration, judicial settlement or Council enquiry and to refrain from resorting to war until three months after the conclusion of such pacific attempts to resolve the dispute. Under Article 13 states agreed to refrain from resorting to war against any member state which had complied with pacific attempts at dispute resolution. Article 15 provided that when member states refused to submit a dispute to pacific resolution, that dispute would be submitted to the League Council, which would complete a report suggesting how the dispute should be resolved. Paragraph 6 of Article 15 provided that if the report was unanimously accepted by the Members of the League Council, then member states agreed to refrain from going to war with any party to the dispute which subsequently complied with the recommendations of the Council’s report. Paragraph 7 of Article 15 provided that if the Council failed to reach unanimity as to what to recommend in its report, then member states reserved the right to take “such action as they consider necessary for the maintenance of right and justice”.

⁵⁰ Covenant of the League of Nations, Article 15.7.

⁵¹ Covenant of the League of Nations, Article 16.2.

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.⁵²

Article 16.1 seemed to suggest, therefore, that if a member state were to resort to war in a manner that violated its obligations under the Covenant, it would automatically be considered to have committed an act of war against all of the other League of Nations member states, who would then be required to implement immediately coercive measures that would result in the effective financial, commercial and cultural isolation of the rogue state.⁵³

In practice, however, the framework for sanctions outlined in Article 16.1 was subsequently compromised by the manner in which it was interpreted by member states. The first major point of contention was the question of who should be responsible for interpreting whether a resort to war in violation of the Covenant had actually occurred. The second major point of contention was the question of whether, once a determination had been made that such a resort to war had occurred, states could actually be obligated to employ non-

⁵² Covenant of the League of Nations, Article 16.1.

⁵³ In advocating for the inclusion of Article 16.1 in the Covenant, the U.S. President Woodrow Wilson had remarked: "Suppose somebody does not abide by these engagements, then what happens? An absolute isolation, a boycott. The boycott is automatic. There is no "if" or "but" about it in the Covenant ... No goods can be shipped in or out, no telegraphic messages can be exchanged, except through the elusive wireless, perhaps; there shall be no communication of any kind between the peoples of the other nations and the people of that nation. The nationals, the citizens of the Member States, will never enter their territory until the matter is adjusted, and their citizens cannot leave their territory. It is the most complete boycott ever conceived in a public document, and I want to say with confident prediction that there will be no more fighting after that. There is not a nation that can stand that for six months": as quoted by Daoudi, M.S. & Dajani, M.S., *Economic Sanctions, ideals and experience* (1983) Routledge, London, 26.

military sanctions.⁵⁴ Ultimately, the interpretation of Article 16.1 which came to be widely accepted was that if a question arose as to whether a member state had resorted to war in violation of the Covenant, the determination of a central organ of the League, such as the League Council, could provide guidance,⁵⁵ but that it remained up to individual states to decide for themselves whether they considered there to have been a resort to war in violation of the Covenant.⁵⁶ This meant that states could effectively avoid the obligation to apply non-military sanctions by deciding that there had been no breach of the Covenant.⁵⁷

League of Nations sanctions against Italy

Although the existence of Article 16.1 has been credited with having played a role in the resolution of some other conflicts,⁵⁸ the League's first and only concrete experiment with collective non-military sanctions occurred in 1935-6, as a response to the invasion of

⁵⁴ The rationale for arguing that states could avoid what appears from the text of the Covenant to be a strict obligation to employ non-military sanctions was grounded in the fact that under classic international law states had reserved the right to determine what response they should take when another state declared war against them. The argument was therefore that even if it was perfectly clear that a resort to war in violation of the Covenant had occurred, it nevertheless remained the fundamental prerogative of each state to determine what response it should make to such a resort to war.

⁵⁵ Clark, Evans (ed), *Boycotts and Peace: a Report by the Committee on Economic Sanctions* (1932) Harper, New York, 94 (stating that the opinions and recommendations of the League Council possess "only a moral value").

⁵⁶ The League Assembly's Resolution 4 of September 27, 1921 stated: "[I]t is the duty of each Member of the League to decide for itself whether a breach of the Covenant has been committed": League of Nations document A.1921.P, 453. See also Kelsen, Hans, *The Law of the United Nations: a Critical Analysis of its Fundamental Problems* (1951) Steven & Sons, London, 726 ("[I]t was upon each Member of the League to decide for itself whether the violation of the Covenant referred to in Article 16, paragraph 1, had been committed; and ... the Member was obliged to take economic provided for in this paragraph only if it decided the question in the affirmative").

⁵⁷ Schiffer, Walter, 'The Idea of Collective Security' in Larus, Joel (ed.), *From Collective Security to Preventive Diplomacy* (1965) John Wiley, NY, 187-202, 190 ("Participation in the economic sanctions was considered compulsory in the case of a breach of the Covenant. But it was left to each member of the League to decide whether such a breach actually had occurred").

⁵⁸ See, e.g., Fiédorowicz, George de, 'Historical Survey of the Application of Sanctions' (1937) 22 *Problems of Peace and War (Grotius Society Papers)* 117-31, 119 (stating that in 1921 the "threat of possible enforcement of Art. XVI had a prohibitive influence in the Albanian-Serb-Croat-Slovene war-like struggle").

Abyssinia by Italy. A dispute had been brewing between Italy and Abyssinia since late 1934, and various attempts to resolve it through pacific means had failed.⁵⁹ The League of Nations Council was in the process of writing a report which would make recommendations as to what should be done to resolve the dispute when Italian forces invaded Abyssinian territory on October 3, 1935, rendering the League's report redundant.⁶⁰

The Abyssinian government sought to invoke Article 16 of the Covenant at a meeting of the League Council on October 5.⁶¹ The Council immediately established a sub-committee to verify that a resort to war in violation of the Covenant had indeed taken place.⁶² On October 7 the sub-committee presented its findings, concluding that Italy had indeed resorted to war in violation of its obligations under the Covenant.⁶³ That same day the League Council unanimously indicated in a roll-call that they agreed with the findings of the sub-committee, and the matter was then referred to the League Assembly. On October 9, 50 of the 54 League member states present concluded that Italy had violated Article 12 of the Covenant and agreed to implement the measures prescribed in Article 16.⁶⁴

In order to implement sanctions under Article 16, the League Assembly established a Co-ordinating Committee to make recommendations as to what measures the member

⁵⁹ For a detailed account of the various attempts at negotiation, arbitration and conciliation, see: League of Nations Information Section, *The League From Year to Year* (1935) League of Nations Information Section, Geneva, 53-88, 53-69.

⁶⁰ Royal Institute, *Sanctions*, above note 7, 70-72.

⁶¹ League of Nations Information Section, *The League From Year to Year* (1935), above note 59, 75.

⁶² This sub-committee consisted of representatives of the UK, Chile, Denmark, France, Portugal and Roumania: League of Nations Information Section, *ibid* 76.

⁶³ League of Nations document C 417, 1935, VII: *Report of the Committee of Six on Responsibility for the Outbreak of Hostilities*.

⁶⁴ Of the four member states who did not vote in favour of applying Article 16 measures, three (Austria, Hungary and Italy) expressed the view that Italy had not violated the Covenant and one (Albania) advocated against the application of sanctions: League of Nations Information Section, *The League From Year to Year* (1935), above note 59, 78.

states who had agreed to impose sanctions should employ.⁶⁵ The Co-ordinating Committee, which comprised a representative of each of the states which had agreed to impose sanctions, proved too large and unwieldy to engage in the necessary detailed discussion, so a sub-committee was formed. It was composed of the main member states whose cooperation was considered essential to the success of the sanctions. These states numbered eighteen, and the sub-committee became known as the “Sub-Committee of Eighteen”. The Sub-Committee of Eighteen completed its initial work quickly and by October 19 had forwarded its findings to the Co-ordinating Committee. The Co-ordinating Committee ultimately recommended that participating governments should: prevent the export of arms and arms-related material to Italy;⁶⁶ prohibit financial transactions between individuals and institutions within its jurisdiction and Italian individuals and institutions;⁶⁷ prohibit the import of goods originating in Italy;⁶⁸ and prohibit the export to Italy of goods considered necessary for the waging of war, such as rubber, bauxite, aluminium and iron

⁶⁵ According to the Royal Institute, the coordinating committee was comprised of those member states who had voted in favour of imposing Article 16 sanctions, which in its estimations amounted to 50. See Royal Institute, *Sanctions*, above note 7, 71. According to Bradley, however, the committee consisted of all member states except for Italy: Bradley, Phillips, ‘Some Legislative and Administrative Aspects of the Application of Article XVI of the Covenant’ (1937) 22 *Problems of Peace and War (Grotius Society Papers)* 13-29, 21. According to Fiédorowicz, four of the member states took no action in the Italian sanctions episode at all: Fiédorowicz, ‘Historical Survey of the Application of Sanctions’, above note 58, 129. This assertion seems to reinforce the Royal Institute’s claim, however Fiédorowicz notes the number of League of Nations member states as fifty-eight!

⁶⁶ Co-ordinating Committee of the League Assembly for the application of Article 16 sanctions against Italy, Proposal No. 1, as reproduced in Royal Institute, *Sanctions*, *ibid* 70-71.

⁶⁷ Co-ordinating Committee of the League Assembly for the application of Article 16 sanctions against Italy, Proposal No. 2, as reproduced in Royal Institute, *ibid* 71.

⁶⁸ Co-ordinating Committee of the League Assembly for the application of Article 16 sanctions against Italy, Proposal No. 3, as reproduced in Royal Institute, *ibid* 71.

ore.⁶⁹ The recommendations of the Co-ordinating Committee were adopted by the League Assembly on November 2,⁷⁰ and sanctions came into effect on November 18.⁷¹

The League of Nations experiment with non-military sanctions ultimately failed to achieve the aim of forcing Italy to withdraw from Abyssinia. On July 4, 1936, less than eight months after they had first been imposed, the sanctions were officially terminated by the League Assembly.⁷² Although there was evidence that the sanctions had affected the Italian economy considerably,⁷³ they were widely considered to have failed because they were subverted by the four major powers of the time, two of which were still member states of the League.⁷⁴ A particular criticism of the sanctions regime was that it should have included an embargo upon oil and petroleum products, without which it is arguable that Italy could not have continued its occupation of Abyssinia.⁷⁵ Political and historical commentators have

⁶⁹ Co-ordinating Committee of the League Assembly for the application of Article 16 sanctions against Italy, Proposal No. 4, as reproduced in Royal Institute, *ibid* 71

⁷⁰ Fifty-two member states agreed to enforce proposals 1 and 2, fifty agreed to enforce proposal 3, and fifty-one agreed to impose proposal 4. For a full list of those states, see: League of Nations Information Section, *The League From Year to Year* (1935), above note 59, 84-5.

⁷¹ League of Nations Information Section, *ibid* 82.

⁷² Of the 45 member states which voted, only one - Abyssinia itself - voted against terminating the sanctions: *Geneva*, vol. IX, no. 7 (July 1936).

⁷³ In January 1936 Italian exports to thirty of its regular trading partners had declined 53 percent compared to the figures of the preceding year, and in February they had declined by 59 percent: *Geneva*, vol. IX, no. 5 (May 1936), 175.

⁷⁴ Lorenz notes that "France sabotaged all efforts to embargo oil, without which the Italian army would have ground to a halt; Britain allowed Rome passage through the Suez Canal, which was essential to the Italian supply line; Germany, no longer a member of the League, happily took up the slack in the sale of arms and other commodities; and the United States, driven by economic self-interest, refused to support the embargo in every respect except for a ban on arms shipments to both belligerents": Lorenz, Joseph P., *Peace, Power and the United Nations* (1999) Westview Press, Boulder, CO, above note 4, 25. Fiédorowicz is even more condemnatory of those League of Nations member states who did not apply sanctions, noting, "it is already a common secret in one or another of the countries claiming to impose all the restrictions recommended, that the trade exchange with Italy was bigger during these restrictions than before their so-called "enforcement": Fiédorowicz, 'Historical Survey of the Application of Sanctions', above note 58, 129.

⁷⁵ Daoudi, M.S. & Dajani, M.S., *Economic Sanctions, ideals and experience* (1983) Routledge, London, 63 ("The one sanctions that could have been most effective, had it been implemented properly, was the oil sanction. Oil was an absolute necessity to the Italian war machine;

speculated that the two major powers ostensibly involved in the imposition of sanctions, France and Britain, were afraid of creating a sanctions regime which was too stringent in case that strategy had the effect of pushing Mussolini into partnership with Hitler.⁷⁶ Ironically that partnership developed despite a weaker sanctions regime,⁷⁷ and the military build-ups and aggression of the 1930s culminated in the outbreak of a Second World War. The League of Nations, which had been established with the lofty goal of ensuring international peace by eradicating the use of war, was powerless to prevent the concerted efforts of major powers to wage war.

deprived of their oil supplies, the Italian army would have had no choice but to retreat"); Dell, Robert E., *The Geneva Racket* (1941) Robert Hale, London, 117 ("If the League put an embargo on oil and if the United States did likewise, Mussolini was doomed").

⁷⁶ See, e.g., Millward, Alex, 'Only Yesterday: some reflections on the "thirties" with particular reference to sanctions' (1957) 1 *International Relations* 281-90, 283 (stating that in the view of England and France, "Germany was the enemy, and it was all-important to keep Italy on their side rather than drive her into the arms of Nazi Germany").

⁷⁷ The former British Prime Minister Anthony Eden seems to have felt that the League's sanctions, even without the inclusion of an oil embargo, nevertheless represented one of the reasons why Mussolini entered into partnership with Hitler: Eden, Anthony, *The Eden Memoirs: Facing the Dictators* (1962) Cassell, London, 387 ("There was a failure to see in advance that any effective sanctions, even economic ones, must carry with them the risk of war").

3.4 Learning from the League's Experience

Commentators suggested many explanations as to why the League of Nations system in general, and the non-military sanctions experiment in particular, had failed. Among the reasons posited for the failure of the League system as a whole were: that the League had been doomed from the moment of its creation, enmeshed as it was in a peace settlement that had been perceived as unfair and vengeful by the nations who had been vanquished in the first World War;⁷⁸ the League's inability to secure the participation and commitment of all the major powers;⁷⁹ and the failure of the League Covenant to outlaw not simply the resort to war, but also the aggressive use of force short of war.⁸⁰ The major weaknesses of the League's sanctions mechanism were perceived to be: the absence of a definitive objective test for determining when sanctions would be applied;⁸¹ the failure to secure the participation of the major powers in the application of sanctions;⁸² and the failure to prevent

⁷⁸ Schiffer, 'The Idea of Collective Security', above note 57, 198 ("The guarantee against aggression, which the League provided for its members, was ... bound to appear as a guarantee of the results of victory, and the common interest on which the League's functioning depended became an interest of the victorious powers not so much in peace as such as in the maintenance of the concrete political situation created by the peace treaties").

⁷⁹ Hindmarsh, *Force in Peace*, above note 7, 170 ("The experience of the League emphasizes above all the fact that the defection of a single powerful state is sufficient to prevent the realization of an effective organization for world peace").

⁸⁰ Clark, Evans (ed), *Boycotts and Peace*, above note 55, 94 ("All these difficulties would be removed were the provisions of Article 16 extended in such a manner as to be applicable against a state which resorts to any act of force whatever and not only to war"); Hindmarsh, *ibid* 124 ("It is hardly to be expected that a lasting world peace structure can be founded on a basis so limited as the prohibition of a legal status of war, while practically all the concrete evils associated with that status are allowed to continue").

⁸¹ Murray, Gilbert, 'A League of Nations: the First Experiment' in Larus, *From Collective Security to Preventive Diplomacy*, above note 57, 176-86, 186 ("I think the obligations of this Article should be made clear and definite. Nations have not much scruple in evading a loosely expressed obligation; they do not like to be seen publicly breaking a perfectly specific pledge"); Hindmarsh, *ibid* 171 ("To be effective sanctions must become operative at some moment determinable by objective tests").

⁸² Highley, Albert E., *The Actions of the States Members of the League of Nations in Application of Sanctions Against Italy, 1935/1936* (1938) *Journal de Genève*, Geneva, 229 ("The real key to the successful application of sanctions is loyal and vigorous leadership by the great Powers

neighbouring nations from opting out of the coalition of states imposing sanctions, whether due to the fear of retaliation or anxiety about losing trade revenue.⁸³

When international leaders gathered in San Francisco in 1945 to create a new international organization, after another devastating world war, the failures of the League weighed heavily upon their minds.⁸⁴ The ultimate structure of the new organisation, the United Nations, was determined to a large degree by the perceived failures of the structure of the League of Nations. The perceived failures of the League's sanctions experiment exerted a similar influence over the ultimate design of the U.N.'s system for collective security and over the mechanism of non-military sanctions incorporated within that collective security system.

applying them plus a determination to make them succeed. Otherwise there is no hope of obtaining and retaining the essential cooperation of the lesser Powers and of bringing the Aggressor to terms"); Hindmarsh, *ibid* 171 ("[S]tates are reluctant as yet to undertake general commitments which may require them to apply coercive sanctions in regions of the world where they have no direct interests").

⁸³ Hindmarsh, *ibid* 171 ("[There is an] unwillingness [on the part] of small states to commit themselves to the application of coercive sanctions against powerful neighbors").

⁸⁴ Winston Churchill is quoted as having said during the War, "When the war is over, we must build up a League of Nations based upon organised force and not disorganised nonsense": Nicolson, Harold, *Diaries and Letters* (1966) Atheneum, New York, vol. 1: 1930-1939, 393.

4. The legal framework governing the application of U.N. sanctions

This chapter outlines the legal framework governing the application of U.N. sanctions. Section 4.1 discusses the manner in which the United Nations was established with the basic purpose of maintaining international peace. It also describes how the U.N.'s Security Council was granted primary responsibility for the maintenance and restoration of international peace and security. Section 4.2 outlines the manner in which U.N. sanctions are designed to work in theory, introducing the U.N. Charter provisions that empower the Security Council to impose sanctions in order to maintain or restore the peace. Section 4.3 explains how the Security Council's use of sanctions in practice has led to the evolution of the U.N. sanctions system. The section thus sets the scene for the chapters to come in Part III, which trace the contours of the U.N. sanctions system.

4.1 The birth of the United Nations and the creation of the U.N. Security Council

The United Nations was born in the final months of World War II, when delegations from around the globe gathered in San Francisco to create an international organisation which would "save subsequent generations from the scourge of war".¹ The founders of the United Nations were also motivated by a desire to avoid repeating the failures of the League

¹ Preamble to the United Nations Charter: see *Charter of the United Nations*, Department of Public Information, New York, NY, 3. The United Nations Charter was signed on 26 June 1945 and entered into force on 24 October of the same year: see the introductory note to the Charter. For accounts of the drafting history of the United Nations Charter, which can be traced back to as early as December 1941, see: Evatt, Herbert Vere, *The United Nations* (1948) Harvard UP, Cambridge, MA; Hilderbrand, Robert C., *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security* (1990) UNC Press, Chapel Hill, NC; Simma, Bruno (ed.), *The Charter of the United Nations: a Commentary* (2002: 2^d edition) Oxford UP, 1-12; Schlesinger, Stephen C., *Act of Creation: The Founding of the United Nations* (2003) Westview Press, Boulder, CO.

of Nations. The new organisation was established by the United Nations Charter, which lists the U.N.'s Purposes and Principles, defines the rights and obligations of States Members of the United Nations, and establishes the major U.N. organs.²

The formal Purposes of the United Nations, outlined in Article 1 of the United Nations Charter, each aim to further the basic goal of preserving international peace and security.³ They recognise that in order to secure genuine peace and security, action must be taken not only to resolve existing or potential international conflicts,⁴ but also to minimise the development of future international disputes by attempting to eradicate the causes of conflict.⁵ In order to facilitate the realisation of the formal purposes of the United Nations, the Charter established six major U.N. organs: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat.⁶ Three of the U.N. organs were created in order to facilitate the development of broader strategies to eradicate the causes of conflict: the General Assembly,

² *Charter of the United Nations, ibid.*

³ Article 1 states: "The Purposes of the United Nations are:

1. To maintain international peace and security; and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without discrimination as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

⁴ See Article 1(1) of the United Nations Charter, *ibid.*

⁵ See Articles 1(2) - 1(4) of the United Nations Charter, above note 3.

⁶ Article 7 of the Charter establishes these entities as the principal organs of the United Nations.

which would discuss questions within the scope of the Charter and make recommendations on those questions to Member States and the Security Council;⁷ the Economic and Social Council, which would initiate studies and reports and make recommendations on a range of matters, including international economic, social, cultural, educational and health questions, as well as human rights;⁸ and the Trusteeship Council, which would monitor conditions in “trust territories” administered by U.N. Member States.⁹ Two of the organs were established to perform the function of resolving and preventing the exacerbation of existing conflict: the International Court of Justice, which would adjudicate legal disputes between States willing to submit disputes to its jurisdiction;¹⁰ and the Security Council, which was given primary responsibility for the maintenance of international peace and security.¹¹ The final U.N. organ, the U.N. Secretariat, was created primarily in order to provide

⁷ Chapter IV (Articles 9-22) of the Charter details the composition, functions and powers, voting, and procedure of the General Assembly. The General Assembly’s freedom to make recommendations is circumscribed to some extent, however, by Article 12, which provides that the General Assembly cannot make recommendations relating to a matter that is being addressed by the Security Council, unless the Security Council so requests.

⁸ Chapter X (Articles 61-74) of the Charter details the composition, functions and powers, voting, and procedure of the Economic and Social Council (ECOSOC). The Charter also makes provision for the establishment of intergovernmental agencies to assist with activities within ECOSOC’s sphere (United Nations Charter, Articles 57-9).

⁹ Chapter XIII (Articles 86-91) of the Charter details the composition, functions and powers, voting, and procedure of the Trusteeship Council. The establishment of the Trusteeship Council reflected the fact that, at the time the Charter was framed, many territories remained under the colonial authority of other nations. The pace of self-determination in a changing world has rendered this U.N. organ all but defunct.

¹⁰ Chapter XIV (Articles 92-96) of the Charter outlines the role of the International Court of Justice within the United Nations system. The composition and procedure of the International Court of Justice are defined in the Charter of the International Court of Justice, which appears as an annex to the United Nations Charter.

¹¹ Chapter V (Articles 23-32) of the Charter details the composition, functions and powers, voting, and procedure of the Security Council. Chapter VI (Articles 33-38) outlines a framework for the pacific settlement of disputes, under which the Security Council has a guiding role. Chapter VII (Articles 39-51) outlines a framework for addressing disputes which threaten international peace and security, for which the Security Council has a primary role. For further discussion see section 4.2, below.

administrative support to the other U.N. organs, with the exception of the International Court of Justice.¹²

In an attempt to increase the likelihood that the new organisation would succeed where its predecessor, the League of Nations, had failed, the U.N. founders incorporated in the United Nations Charter features designed to ensure not just the participation of as wide a collection of States as possible, but also the active participation of the most powerful States. The founders secured the membership of the Great Powers of the time - the United States of America, the Soviet Union, the United Kingdom, China and France - by granting them permanent membership on the United Nations Security Council.¹³ Along with

¹² Chapter XV (Articles 97-101) establishes the Secretariat. Although the primary role of the Secretariat is to support and sustain the activities of the other U.N. organs, the Charter does provide scope for the Secretary-General – the leader of the Secretariat – to engage in activities designed to resolve conflict. The Secretary-General can do so at the request of a primary organ of the U.N., such as the Security Council or the General Assembly, in accordance with Article 98 (Article 98 provides that the Secretary-General shall perform such tasks as are entrusted to him by the General Assembly, the Security Council, ECOSOC and the Trusteeship Council). The Secretary-General also has limited scope to undertake initiatives, however, under Article 99 (Article 99 provides that: “The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security”). For further discussion of the “Good Offices” role of the Secretary-General in international dispute resolution, see: Franck, Thomas M. & Nolte, Georg, ‘The Good Offices Function of the UN Secretary-General’, in Roberts, Adam & Kingsbury, Benedict, *United Nations, Divided World: The UN’s Roles in International Relations* (1994: 2nd edition), 143-82; Merrills, J.G., *International Dispute Settlement* (1998 – 3rd edition), 226-32.

¹³ Article 23 of the Charter designates these States as permanent members of the Security Council. The decision as to which States would become permanent members was effectively made by a process of self-selection, with the Great Powers themselves determining who should be counted amongst their ranks. Initially the United States, the United Kingdom and the Soviet Union were to be permanent members, but by the time of the San Francisco Conference membership had expanded to include China and France. The question of permanent membership was not uncontroversial, with a number of smaller States, and in particular Mexico, advocating for forms of semi-permanent membership that would be subject to periodic review in the form of elections by the broader U.N. membership. For discussion of the various proposals, see: Simpson, Gerry, ‘The Great Powers, Sovereign Equality and the Making of the United Nations Charter’ (2000) 21 *AYBIL* 133-58, 141-2, 149-50.

permanent membership came the power of the veto, ensuring that the permanent five would never themselves be subjected to collective security action.¹⁴

¹⁴ Article 27(3) bestowed the veto power upon the permanent members of the Security Council. Since an amendment to the Charter in 1965 expanded the membership of the Security Council from 11 to 15 and increased the number of required affirmative votes from 7 to 11, that provision has provided: "Decisions of the Security Council on all [non-procedural] matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members". For discussion of that amendment to the Charter, which was initiated by the General Assembly on 17 December 1963 via General Assembly resolution 1991 A (XVIII) and entered into force on 31 August 1965, see: Simma, *The Charter of the United Nations* (2nd edition), above note 1, 1356-7. For discussion of the general process required to amend the Charter, as provided for by Article 108, see also Simma, 1341-63.

The idea of the veto was floated in the Dumbarton Oaks proposals, which emerged from the Dumbarton Oaks Conference. That Conference consisted of a two-stage set of negotiations, held between August and October 1944, in which the United States and the United Kingdom met first with the Soviet Union, and then with China. For an account of the discussions at Dumbarton surrounding the veto proposal, see: Hilderbrand, *Dumbarton Oaks*, above note 1, 183-228. For the proposals arising from Dumbarton Oaks, see: U.S. Department of State, *Proposals for a general international organization as developed at Dumbarton Oaks* (1944) Washington, D.C., USA.

At San Francisco, the proposed incorporation of the veto attracted heated debate. Some States were against the very idea of the veto, arguing that a system which would enable one country to prevent the Organization from taking urgent action to maintain or restore international peace and security would be both fundamentally flawed and unjust. See, e.g., the positions of the delegates from the Netherlands and Mexico: *Documents of the United Nations Conference on International Organization* (1945) United Nations Information Organizations, New York, Vol. XI: Commission III: Security Council, 163-4 (where Mr. Loudon of the Netherlands states: "The Netherlands Delegation fully realizes that in the present state of the international community, it may be necessary to invest certain powers with special rights if a new organization for the maintenance of peace and security is to be established at all. Such a position the great powers have in fact always enjoyed in the past. Now, however, this special status is going to be officially recognized and sanctioned. We believe this to be regrettable. Why? Because this new system legalizes the mastery of might which in international relations, when peace prevailed, has been universally deemed to be reprehensible"), 333 (where the record notes: "[T]he requirement of unanimity among the great powers was declared by the Delegate of Mexico to be unprecedented and against all concepts of justice").

Other States argued for the incorporation of certain restrictions upon the use of the veto, such as providing that the veto could only be used in regard to decisions on preventive or enforcement action (i.e. Chapter VII action), but not for matters involving the peaceful settlement of disputes (i.e. Chapter VI action). See, e.g., the position of Australia, as recalled by the head of the Australian delegation to San Francisco, Herbert Vere Evatt: Evatt, *The United Nations*, above note 1, 36 (listing as one of the Australian objectives at the San Francisco conference "To exclude the veto of the permanent members from all arrangements relating to the peaceful settlement of disputes, and to confine such veto to decisions involving the application of economic and military sanctions"); Evatt, Herbert V., *The Task of the United Nations* (1949) Duell, Sloan and Pearce, NY, NY, 47-8 ("The principle of the unanimity of the great powers on great matters involving enforcement measures is one of the rocks on which the United Nations has had to be built. The peaceful settlement of disputes is quite a different matter. As it is now, any one of the permanent members of the Security Council can use its right to the individual veto so that it prevents the Council taking measures to mediate, to bring the parties together, or to call upon the parties fighting to cease fighting").

4.2 The legal basis and effect of the Security Council's sanctions powers

As their League predecessors had done almost three decades earlier, the U.N.'s founders included non-military sanctions as one of the major tools in the new international organisation's arsenal for resolving international conflict. They sought, however, to create a non-military sanctions mechanism that would come into operation in a more clear-cut manner than League of Nations non-military sanctions, and which would be assured of the support of the major powers and States in general.¹⁵ Rather than leaving the decision as to whether to impose sanctions in the hands of individual States,¹⁶ the Charter centralised decision-making by bestowing upon the Security Council, through Chapter VII, the power

Ultimately, however, the Great Powers were unprepared to compromise in relation to the veto, maintaining that they would not sign the United Nations Charter unless the veto was retained as proposed. In a telling gesture, Senator Connally of the United States tore up a copy of the United Nations Charter by way of demonstrating what would happen if the veto was not retained as originally proposed. For a dramatic description of that event, see: Schlesinger, *Act of Creation*, above note 1, 223.

For examples of the literature surrounding the topic of the veto, see: Simma, *The Charter of the United Nations* (2nd edition), above note 1, 476-523; Bailey, Sydney D. & Daws, Sam, *The Procedure of the UN Security Council* (3rd ed. 1998) Clarendon Press, Oxford, 227-39; Sellen, Keith L., 'The United Nations Security Council Veto in the New World Order' (1992) *Military LR* 138 187-262.

¹⁵ For comparisons of the relative merits of the sanctioning systems of the League of Nations and the United Nations, see Kelsen, Hans, 'The Old and the New League: the Covenant and the Dumbarton Oaks Proposals' (1945) 39 *AJIL* 45-83; Kelsen, Hans, *The Law of the United Nations: a Critical Analysis of its Fundamental Problems* (1951) Steven & Sons, London, 724-56; and Nossal, Kim Richard, 'Economic Sanctions in the League of Nations and the United Nations' in Leyton-Brown, David (ed), *The Utility of International Economic Sanctions* (1987) Croom Helm, Beckenham, Kent, 7-22.

¹⁶ Ironically, the aim of the founders of the League of Nations had also been to take the decision as to whether to impose sanctions out of the hands of States by requiring them to impose sanctions automatically when a member State resorted to war in violation of the Covenant. As discussed in chapter 3, however, that provision was interpreted in such a way that ultimately, although member States were considered to be *ipso facto* at war with the rogue State, they were nevertheless deemed to retain the right to respond to that situation in whatever manner they desired.

to authorise sanctions.¹⁷ Furthermore, the Charter granted the Security Council the power to obligate Member States to observe and enforce sanctions.¹⁸

The legal basis for the Security Council's power to impose U.N. non-military sanctions is located in Chapter VII of the U.N. Charter, which outlines the general powers and responsibilities of the U.N. Security Council with respect to the maintenance of international peace and security. Comprising Articles 39-51 of the Charter, Chapter VII provides a broad framework for taking action to maintain or restore international peace and security. Articles 39 and 41 are the key provisions governing the application of non-military sanctions. Article 39 requires the Security Council to determine the existence of any "threat to the peace, breach of the peace, or act of aggression" and to decide what action should be taken, in accordance with Articles 41 and 42, to maintain or restore international peace and security.¹⁹ Article 41 describes the types of non-military sanctions that can be authorised by

¹⁷ Kelsen, *The Law of the United Nations*, above note 15, 726 ("[T]he enforcement actions under Article 16 of the Covenant were almost completely decentralized, whereas the enforcement measures to be taken under Article 39 of the Charter are strictly centralized"). Kelsen subsequently describes the centralization of enforcement measures under the United Nations Charter as "a great progress": *ibid*, 746. See also Gowlland-Debbas, Vera, *Collective Responses to Illegal Acts in International Law: United Nations Action in the Question of Southern Rhodesia* (1990) Martinus Nijhoff, Dordrecht, 367 ("Whilst Under the League system it was left up to each Member State to decide whether another State had breached its obligations under the Covenant, the Charter centralizes this decision in the Security Council").

¹⁸ Article 25 of the Charter provides that Member States agree to accept and carry out the decisions of the Security Council in accordance with the Charter. For further discussion of Article 25, as well as of the argument that the Security Council's power to bind States extends to States non-Members, see notes 28 to 43 and accompanying text, below.

¹⁹ Article 39 reads: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

There are no widely-accepted definitions of what constitutes a "threat to the peace", a "breach of the peace", or an "act of aggression". This lack of a precise definition was intentional, as the founders aimed to give the Security Council maximum flexibility in determining when it was necessary to respond to a particular situation: see Hilderbrand, *Dumbarton Oaks*, above note 1, 138 (noting that during the Dumbarton Oaks conferences the decision was made not to provide a specific definition of "aggression", in order to avoid limiting the breadth of the Council's powers, particularly in the face of the advancing technology of warfare). At the time

the Council,²⁰ and Article 42 describes the types of military action that the Council can mandate if it considers that non-military sanctions would prove, or have proven, inadequate.²¹

Article 41 contains an inclusive list of the coercive measures short of force that may be authorised by the Security Council in response to a threat to the peace, breach of the peace, or act of aggression. It provides that U.N. non-military sanctions may include measures designed to interrupt, completely or partially, communications or economic or diplomatic relations between the international community and the target against which they are imposed.²² A literal reading of Article 41 in isolation would suggest that the Security Council has the broad power to authorise non-military sanctions in order to give effect to any of its decisions, but in practice Article 41 was designed to be read in conjunction with

the Charter was framed, however, it is likely that a breach of the peace would have been considered to be a full-blown conflict between States, a threat to the peace would have encompassed a situation likely to result in a full-blown conflict between States, and an act of aggression would have described an act of military intervention by one State against another. For discussion of the manner in which these triggers for Chapter VII action have operated in relation to the various sanctions régimes, see Chapter 6, section 6.1. For more general discussion of threats to the peace, breaches of the peace and acts of aggression, see: Simma, *The Charter of the United Nations* (2nd edition), above note 1, 717-28; and Chesterman, Simon, *Just War or Just Peace? Humanitarian intervention and international law* (2001) OUP, Oxford, 127-62. On threats to the peace in particular, see: Østerdahl, Inger, *Threat to the Peace: the interpretation by the Security Council of Article 39 of the UN Charter* (1998) Iustus Förlag, Uppsala; and Fielding, Lois E., 'Taking a Closer Look at Threats to Peace: The Power of the Security Council to Address Humanitarian Crises' (1996) 73 *University of Detroit Mercy LR* 551-68.

²⁰ The full text of Article 41 reads: "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

²¹ The full text of Article 42 reads: "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

²² Article 41, above note 20. For discussion of the types of sanctions employed by the Council in practice, see Chapter 7.

Article 39, meaning that non-military sanctions should, as a rule, be authorised by the Council only after it has determined the existence of a threat to the peace, breach of the peace, or act of aggression.²³ The basic objective of the Council in authorising non-military sanctions should therefore be the maintenance or restoration of international peace and security.²⁴

Two further provisions in Chapter VII are relevant to the application of sanctions. Article 48 provides that the Security Council may determine whether the action required to carry out its decisions shall be taken by all or some of the Members of the United Nations,²⁵ and that the Council's decisions shall be carried out by the Members of the United Nations

²³ This sequence of events for Security Council action under Chapter VII is suggested both by a contextual reading of Articles 39, 41 and 42, and by many commentators: see, e.g., Kelsen, *The Law of the United Nations*, above note 15, 729 (“[U]nder the Charter action can be taken only ... after the Council has determined the existence of a threat to, or breach of, the peace”); Goodrich, Leland M., & Hambro, Edvard, *Charter of the United Nations: Commentary and Documents* (1949: 2^d ed.) World Peace Foundation, Boston, MA, 277 (“It is clear from the wording of [Article 41], taken together with that of Article 39, that a decision to use ‘measures not involving the use of armed force’ can only be taken following a determination, explicit or implicit, that a ‘threat to the peace, breach of the peace, or act of aggression’ exists”); Gowlland-Debbas, *Collective Responses*, above note 17, 381 (“In accordance with a strict interpretation of the Charter, before the Security Council can initiate measures on the basis of either Articles 41 or 42 of Chapter VII, it must make a prior determination or finding qualifying the situation within the terms of Article 39 as constituting a threat to international peace and security”); Shaw, Malcolm N., *International Law* (1997: 4th ed.) Cambridge UP, Cambridge, UK, 855 (“Before the Council can adopt measures relating to the enforcement of world peace, it must first determine the existence of any ‘threat to the peace, breach of the peace or act of aggression’ ... Once such a determination has been made, in accordance with Article 39 of the Charter, the way is clear for the adoption of recommendations or decisions to deal with the situation”); Simma, *The Charter of the United Nations* (2nd edition), above note 1, 739 (noting that a reading of Articles 39, 41 and 42 suggests that the Security Council can make determinations regarding concrete measures to maintain or restore the peace only once the requirements of Article 39 have been met).

On two occasions, however, the Security Council did impose sanctions without having made a prior explicit determination of a threat to international peace and security – in the case of the sanctions régimes imposed against the Bosnian Serbs and against the Federal Republic of Yugoslavia to address the situation in Kosovo. For discussion of the legal ramifications of the Council's approach in those instances, see Chapter 6, section 6.1.1.

²⁴ Article 41, above note 20.

²⁵ Article 48(1). In practice, the Security Council has not called upon particular States to impose mandatory sanctions. For discussion of the Council's practice in relation to identifying the actors who must apply mandatory sanctions, see Chapter 8, section 8.1.

both directly and through their action in international agencies.²⁶ Article 50 further provides that when enforcement or preventive measures are taken against a State, any other State which finds itself confronted by special economic problems arising from the implementation of those measures shall have the right to consult the Security Council with regard to a solution of those problems.²⁷

The legal effect of U.N. sanctions stems from the fact that a decision by the Security Council to impose sanctions creates a legal obligation for States to take action to implement those sanctions. For States that are Members of the United Nations, that legal obligation flows from Articles 25, 103 and 2(5) of the United Nations Charter. Under Article 25, U.N. Member States are required to carry out the decisions of the Security Council.²⁸ Thus, when the Council decides to impose non-military sanctions, U.N. Member States are legally obligated to comply with and implement those sanctions. Article 103 further requires U.N. Member States to grant precedence to their legal obligations under the Charter, meaning that they cannot claim previous legal obligation as an excuse to avoid obligations arising from a decision of the Security Council.²⁹ Article 2(5) of the Charter also requires Member States to refrain from giving assistance to States subject to action under Articles 41 and 42.³⁰

Although the obligation to implement U.N. sanctions is clearly established for States Members of the United Nations, there has been some debate regarding whether that

²⁶ Article 48(2).

²⁷ Article 50. For discussion of the practice of the Security Council in relation to the unintended consequences of sanctions upon third States, see also Chapter 8, section 8.4.

²⁸ Article 25 states that "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter".

²⁹ Article 103 states that "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".

obligation might not also extend to States that are not Members of the U.N.. The traditional, restrictive view is that under general principles of international law States cannot be bound by an obligation under a treaty to which they are not party, unless that treaty obligation reflects a peremptory obligation under customary international law.³¹ A permissive view holds, however, that the Security Council has the power and the capacity to adopt decisions that are legally binding upon non-Member States.³² The basis for such an interpretation is to be found in the Charter, in the decisions of the Security Council, and in relevant state practice in response to those decisions. The Charter-based case for the existence of an obligation upon non-Member States is located in Article 2(6), which provides that the United Nations should ensure that States non-Members act in accordance with the Charter's principles, particularly where necessary for the maintenance of international peace and security.³³ Article 2(6) can be interpreted to mean that there is no essential difference

³⁰ Article 2(5) states that "All Members shall ... refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action".

³¹ See, e.g.: Simma, Bruno (ed.), *The Charter of the United Nations: A Commentary* (1995) C.H. Beck, München, 627 (maintaining that, in the absence of a Security Council declaration that touches upon an obligation that is *erga omnes*, the Council's decisions cannot create a legal obligation for States non-members of the United Nations to impose sanctions); Goodrich, Leland M., & Hambro, Edvard, *Charter of the United Nations: Commentary and Documents* (1949: 2nd ed.) World Peace Foundation, Boston, MA, 108-9 (stating: "It is doubtful whether an international instrument like the Charter can impose legal obligations on states which are not parties to it. The traditional theory, which is not unanimously held, is that treaties cannot obligate third parties. If this theory is accepted, the authority of the United Nations under this paragraph is based exclusively upon the will and power of the contracting parties").

³² For examples of a more permissive view of the extent to which the Council's decisions can bind States non-members, see: Kelsen, *The Law of the United Nations*, above note 15, 85-6 (contending that Article 2(6) could be interpreted to mean that there was no essential difference between the obligations of Members and non-Members, given that almost all of the obligations of Member States might be considered necessary for the maintenance of international peace and security); Kelsen, Hans, 'Sanctions in International Law Under the Charter of the United Nations' (1946) 31 *Iowa LR* 499-543, 502 (acknowledging that Article 2(6) was not in conformity with general international law at the time the Charter entered into force, but suggesting that Article 2(6) might in future become part of general international law).

³³ Article 2(6) states that "The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security".

between the obligations of Members and non-Members, given that almost all of the obligations of Member States might be considered necessary for the maintenance of international peace and security.³⁴ In fact, the founders included Article 2(6) in the Charter because the aim of the United Nations was not simply to maintain peace within the Organization, but to maintain peace within the whole international community.³⁵ The revolutionary attempt by the founders to apply the Charter to States non-parties has been described as heralding a transition from an old to a new international law.³⁶

The Council's practice relating to the imposition of sanctions indicates that it considers its decisions to bind both Member States and non-Member States. Although the Council differentiated between the obligations of States Members of the U.N. and States not Members of the U.N. in its initial experiment with sanctions, to address the case of the illegal white minority régime in Southern Rhodesia,³⁷ it has not subsequently drawn such a distinction, employing almost uniformly the phrase "All States shall" when outlining the measures to be imposed as part of a sanctions régime.³⁸ Moreover, the Council also

³⁴ Kelsen, *The Law of the United Nations*, above note 15, 85-6.

³⁵ *Ibid* 106.

³⁶ *Ibid* 109-10. See also: Kelsen, Hans, 'Sanctions in International Law', above note 32, 502 (acknowledging that Article 2(6) was not in conformity with general international law at the time the Charter entered into force, but suggesting that Article 2(6) might in future become part of general international law).

³⁷ In resolution 232 (1966) the Council decided that "all States Members of the United Nations" should impose certain sanctions against Southern Rhodesia: S/RES/232 (16 December 1966), operative paragraph 2. The Council subsequently urged "States not Members of the United Nations" to act in accordance with those sanctions: *ibid*, operative paragraph 7. Interestingly, however, although the Council in general continued to distinguish between the duties of "States Members of the United Nations" and "States non-members of the United Nations" in its subsequent resolutions relating to the Southern Rhodesia sanctions régime, in one decision the Council addressed its call to all States. See: S/RES/320 (29 September 1972), operative paragraph 2 (calling upon "all States to implement fully all Security Council resolutions establishing sanctions against Southern Rhodesia (Zimbabwe), in accordance with Article 25 and Article 2(6), of the Charter of the United Nations").

³⁸ See, e.g.: S/RES/418 (4 November 1977), operative paragraph 2, imposing sanctions against South Africa; S/RES/661 (6 August 1990), operative paragraphs 34, imposing sanctions

appears to have sought to extend the obligation upon Member States under Article 103 to non-Members, by calling upon “all States, including States not Members of the U.N.” to act in accordance with sanctions régimes, notwithstanding the existence of any prior, potentially conflicting legal obligation.³⁹ The inclusion of such a provision serves two purposes. First, it

against Iraq; S/RES/713 (25 September 1991), operative paragraph 6, imposing sanctions against the former Yugoslavia (all States of the former Yugoslavia); S/RES/733 (23 January 1992), operative paragraph 5, imposing sanctions against Somalia; S/RES/748 (31 March 1992), operative paragraphs 3-6, imposing sanctions against Libya; S/RES/757 (30 May 1992), operative paragraphs 3-9, imposing sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) to address the situation in Bosnia-Herzegovina; S/RES/788 (19 November 1992), operative paragraph 8, imposing sanctions against Liberia; S/RES/820 (17 April 1993), operative paragraph 12, imposing sanctions against the Bosnian Serbs [although the phrase used in that provision does not explicitly require all States to implement the sanctions, stating instead that the Council “decides that import to, export from and transshipment through ... areas of Bosnia and Herzegovina under the control of Bosnian Serb forces ... shall be permitted only with proper authorisation from the Government of Bosnia and Herzegovina”, in subsequent resolutions tightening the sanctions against the Bosnian Serbs, the Council made it clear that the sanctions régime was intended to bind States in general by using the phrase “decides that States shall ...”. See: S/RES/942 (23 September 1994), operative paragraphs 7-18]; S/RES/841 (15 June 1993), operative paragraph 5-8, imposing sanctions against Haiti; S/RES/864 (15 September 1993), operative paragraph 19, imposing sanctions against Angola (UNITA); S/RES/918 (17 May 1994), operative paragraph 13, imposing sanctions against Rwanda; S/RES/1054 (11 March 1996), operative paragraph 3, imposing sanctions against the Sudan; S/RES/1132 (8 October 1997), operative paragraphs 5-6, imposing sanctions against Sierra Leone; S/RES/1160 (31 March 1998), operative paragraph 8, imposing sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) to address the situation in Kosovo; S/RES/1267 (15 October 1999), operative paragraphs 3-4, imposing sanctions against Afghanistan (the Taliban); S/RES/1298 (17 May 2000), operative paragraph 6, imposing sanctions against Ethiopia and Eritrea; S/RES/1343 (7 March 2001), operative paragraphs 5-7, imposing sanctions against Liberia.

³⁹ The Council outlined provisions of this nature, calling upon all States, including States non-members of the United Nations, to act strictly in accordance with sanctions, notwithstanding the existence of any prior legal obligation, in connection with the sanctions régimes against Iraq, Libya, the Federal Republic of Yugoslavia (Serbia-Montenegro), Haiti, and the Sudan. In connection with the sanctions régime against Iraq, see: S/RES/661 (6 August 1991), operative paragraph 5. In connection with the sanctions régime against Libya, see: S/RES/748 (31 March 1992), operative paragraph 7; S/RES/883 (11 November 1993), operative paragraph 12. In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 11. In connection with the sanctions régime against Haiti, see: S/RES/841 (15 June 1993), operative paragraph 9; S/RES/917 (6 May 1994), operative paragraph 12. In connection with the Sudan sanctions régime, see: S/RES/1054 (26 April 1996), operative paragraph 5.

In addition, the Council also addressed similar calls to “all States” or simply “States” to act strictly in accordance with the sanctions, notwithstanding the existence of any prior legal obligation, in respect of its sanctions régimes against South Africa, Iraq, Libya, UNITA, Rwanda, Sierra Leone, the Federal Republic of Yugoslavia (to address the situation in Kosovo), Afghanistan/the Taliban/Al Qaida, Ethiopia and Eritrea, and Liberia (in the second instance). In connection with the sanctions régime against South Africa, see: S/RES/418 (4 November 1977), operative paragraph 3 (calling upon all States to do so). In connection with the Iraq sanctions

represents an explicit indication that the Council considers the phrase “all States” to include States not Members of the U.N.. Second, it reinforces that the Council expects States not Members to grant precedence to the implementation of sanctions even in situations where such implementation might conflict with a prior legal obligation.

Perhaps the strongest evidence in favour of the view that non-Member States are obligated to impose sanctions is to be found in examples of state practice, as even the restrictive view acknowledges that where a treaty norm has reached the status of general or customary international law, it can bind States non-parties.⁴⁰ Thus, if it can be shown that non-Member States have implemented sanctions in practice and that they have done so out of a belief that they are legally-bound to so act, then it might be said that a norm of

régime, see: S/RES/670 (25 September 1990), operative paragraph 3 (requiring all States to do so); S/RES/687 (3 April 1991), operative paragraph 25 (calling upon all States). In connection with the sanctions régime against Libya, see: S/RES/883 (11 November 1993), operative paragraph 8 (addressing the Governments of all States). In connection with the sanctions régime against UNITA, see: S/RES/864 (15 September 1993), operative paragraph 20 (calling upon States). That provision was reiterated in: S/RES/1127 (28 August 1997); S/RES/1130 (29 September 1997); S/RES/1173 (12 June 1998); S/RES/1176 (24 June 1998); S/RES/1412 (17 May 2002); S/RES/1432 (15 August 2002); S/RES/1439 (18 October 2002). In connection with the Rwandan sanctions régime, see: S/RES/918 (17 May 1994), operative paragraph 15 (calling upon all States). In connection with the Sierra Leone sanctions régime, see: S/RES/1132 (8 October 1997), operative paragraph 11 (calling upon all States); S/RES/1306 (5 July 2000), operative paragraph 9 (again calling upon all States). In connection with the Kosovo sanctions régime, see: S/RES/1160 (31 March 1998), operative paragraph 10 (calling upon all States). In connection with the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1267 (15 October 1999), operative paragraph 7 (calling upon all States); S/RES/1333 (19 December 2000), operative paragraph 17 (against calling upon all States). In connection with the Ethiopia and Eritrea sanctions régime, see: S/RES/1298 (17 May 2000), operative paragraph 9 (calling upon all States). In connection with the Liberia sanctions régime (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 22 (calling upon all States).

⁴⁰ A norm can be identified as one of customary international law where there is evidence of widespread state practice adhering to that norm, as well as the requisite *opinio juris* on the part of States adhering to that norm. As articulated by the International Court of Justice in the *North Sea Continental Shelf Case*, the element of *opinio juris* requires that States engage in a particular practice out of a sense of legal obligation. See: *North Sea Continental Shelf Case* (1969) *ICJ Reports* 3, 44 (paragraph 77) (“Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it ... The States concerned must therefore feel that they are conforming to what amounts to a legal obligation”). For a detailed exposition and analysis of customary international law, see: Byers,

customary international law has evolved to the effect that non-Member States are legally obligated to impose sanctions. There have in fact been a number of instances of non-Member States implementing sanctions. Among the non-Members that have issued statements detailing action taken to apply U.N. sanctions have been the Republic of Korea (prior to becoming a U.N. Member State), Switzerland (also prior to becoming a U.N. Member State) and The Holy See.⁴¹ The extent to which those non-Member States decided to act in accordance with the Iraq sanctions régime out of a belief that they were legally obliged to so act is unclear.⁴² Nevertheless, the fact that they reported at all on steps taken

Michael, *Custom, Power and the Power of Rules* (1999) Cambridge UP, Cambridge, especially 129-203.

⁴¹ See, for instance, the communications sent to the Secretary-General outlining steps taken to implement the sanctions against Iraq by: the Republic of Korea [S/21487 (10 August 1990), annex: *Letter dated 10 August 1990 from the Permanent Observer of the Republic of Korea addressed to the Secretary-General*; S/21617 (24 August 1990), annex: *Note verbale dated 23 August 1990 from the Permanent Observer of the Republic of Korea addressed to the Secretary-General*; S/23016 (9 September 1991), annex: *Note verbale dated 9 September 1991 from the Permanent Observer of the Republic of Korea addressed to the Secretary-General*]; Switzerland [S/21585 (22 August 1990), annex: *Note verbale dated 22 August 1990 from the Permanent Observer Mission of Switzerland addressed to the Secretary-General*; S/22958 (19 August 1991), annex: *Note verbale dated 19 August 1991 from the Permanent Observer Mission of Switzerland addressed to the Secretary-General*] and The Holy See [S/22802 (16 July 1991), annex: *Note verbale dated 9 July 1991 from the Permanent Observer of the Holy See addressed to the Secretary-General*]. Switzerland also submitted similar communications in relation to implementation of the sanctions régimes against the former Yugoslavia and the Federal Republic of Yugoslavia (Serbia-Montenegro). See: S/23338 (31 December 1991), annex: *Note verbale dated 31 December 1991 from the Permanent Observer Mission of Switzerland addressed to the Secretary-General*; S/24160 (24 June 1992), annex: *Note verbale dated 24 June 1992 from the Permanent Observer Mission of Switzerland addressed to the Secretary-General*.

⁴² The Republic of Korea and the Holy See did not provide any indication of their reasons for implementing the sanctions. Switzerland, however, initially claimed that as a non-member State it was not legally bound by the Council's decision to apply sanctions, whilst at the same time reporting various steps that it had taken which effectively amounted to implementing the sanctions. Subsequent communications seemed to indicate relatively routine implementation of the Council's sanctions-related decisions. See: S/21585, *ibid*, p. 2 ("These measures ... were taken independently ... As a non-Member of the United Nations, Switzerland is not in fact legally bound by the decisions of the Security Council, nor, in this case, by resolution 661 (1990). Nevertheless, the aforementioned ordinances, which were adopted independently by the Federal Council, correspond in substance to the resolutions adopted by the Security Council"); S/22958, *ibid*, p. 2 (noting that exceptions from Switzerland's regulations prohibiting commercial and financial interaction with Iraq were only possible within the framework established by resolution 661 (1990), and stating that the arms sanctions outlined in resolution 687 (1991) were being "strictly implemented" by Switzerland); S/23338, *ibid*, p. 2 (outlining

to implement sanctions suggests the possibility of an emerging norm of customary international law which, once fully developed, would provide that U.N. mandatory sanctions bind all States.

In practice, however, the question of whether U.N. sanctions technically create a legal obligation upon States non-members of the U.N. is effectively moot, as United Nations membership has expanded beyond 190 States, leaving but a handful of States beyond the sphere of the legal obligations clearly established for U.N. Member States.⁴³ U.N. sanctions are therefore practically universal in their legal effect, even in the event that they are not technically legally binding upon that handful of States.

4.3 When theory and practice diverge: the Charter's implementation lacuna

In theory, the virtually universal nature of the legal obligation upon States to implement U.N. sanctions should mean that when the Security Council decides to apply sanctions, they will then be implemented universally. Experience has demonstrated, however, that the Council's authorisation of mandatory sanctions is rarely sufficient in itself to guarantee that sanctions will actually be implemented. In some instances, a State may not be able to ensure the watertight implementation of sanctions. In other cases, a State may

steps taken by Switzerland that amounted to implementation of the arms embargo against the former Yugoslavia, in response to the Secretary-General's request for information on measures taken by Switzerland to "comply" with the arms embargo); S/24160, *ibid*, p. 2 (noting that Switzerland was not a member of the United Nations, before proceeding to outline a series of measures taken against the Federal Republic of Yugoslavia (Serbia-Montenegro) in the weeks immediately after the Security Council established the Federal Republic of Yugoslavia (Serbia-Montenegro) sanctions régime).

⁴³ In 2002 Switzerland and East Timor (Timor Leste) became the 190th and 191st States to join the United Nations. The Security Council recommended that Switzerland be granted membership in S/RES/1426 (24 July 2002) and it was admitted on 10 September 2002. The Council recommended to the General Assembly that East Timor be admitted as a Member State in S/RES/1414 (23 May 2002) and it was admitted under the name "Timor Leste" on 27 September

stand to lose so much from the observation of sanctions, or to gain so much from their violation, that it might turn a blind eye to sanctions violations, or resolve not to implement them at all.

The U.N. founders did not outline a detailed blueprint for a system to guarantee the practical implementation of U.N. sanctions. Although the U.N. Charter provides the Security Council with the authority to impose sanctions, it is silent upon the question of what steps could or should be taken to ensure that sanctions are in fact applied. The founders were clearly mindful, however, of the possibility that sanctions might not be fully implemented. Article 50 of the Charter, which provides that any State confronted by “special economic problems” arising from the application of U.N. sanctions has the right to consult the Council to seek a solution to its problem,⁴⁴ appears to have been designed to address the likelihood that a State might consider violating a sanctions régime if its economy relies heavily upon trade with a State subject to U.N. sanctions.⁴⁵ In addition, the founders bestowed upon the Council, through Article 29 of the Charter, the power to establish

2002. An example of a State that is not a Member of the United Nations is the Holy See, which nevertheless continues to maintain an observer mission to the United Nations.

⁴⁴ Logically, Article 50 excludes a State that is the target of sanctions from approaching the Council in relation to its “special economic problems.” The Article states: “If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.”

⁴⁵ Article 50 has not proven particularly effective in offsetting the economic problems faced by States who would normally benefit from trade with a target State. In fact, it has been described as a “dead letter”: see Malone, David M., *Decision-Making in the UN Security Council: the Case of Haiti, 1990-1997* (1998) Clarendon Press, Oxford, 21. Although Article 50 grants specially-affected States the right to consult the Security Council about their economic problems, it does not require or obligate the Council to take subsequent action to alleviate those problems. In practice, despite numerous petitions from specially-affected countries in relation to various sanctions régimes, the Council has taken minimal action to ease the plight of such States in a limited number of cases and in a restricted manner. The action that it has taken has consisted of appealing to States to provide technical, financial and material assistance to the country concerned, and inviting the competent organs and specialized agencies of the

subsidiary organs to facilitate the Council's work.⁴⁶ Article 30 of the Charter also empowers the Council to adopt its own rules of procedure.⁴⁷ Through these mechanisms, the U.N. founders therefore afforded the Council the flexibility to take whatever steps it might consider necessary or appropriate to guarantee the implementation of its decisions.

Rather than creating a comprehensive system to oversee the administration and implementation of sanctions, the Security Council has generally responded to the need to take additional steps to guarantee sanctions implementation on an *ad hoc*, case-by-case basis.⁴⁸ It has also called upon particular actors to facilitate the implementation of particular sanctions régimes.⁴⁹ Nevertheless, despite the absence of a sophisticated, pre-designed sanctions machinery,⁵⁰ sufficient patterns can be detected in the Council's sanctions practice

United Nations system to review their programmes of assistance to affected countries, with a view to alleviating hardships. For further discussion, see Chapter 8, section 8.4.2.

⁴⁶ Article 29 of the Charter states that "The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions".

⁴⁷ Article 30 of the Charter states that "The Security Council shall adopt its own rules of procedure, including the method of selecting its own President." Although the Council has never adopted a formal set of rules of procedure, it has agreed upon a set of provisional rules of procedure, which are followed in practice. See S/96/Rev.7: *Provisional Rules of Procedure of the Security Council* (1982) United Nations, NY. For a description of the negotiations leading to the formulation and adoption of the provisional rules, see Bailey & Daws, *The Procedure of the Security Council*, above note 14, 9-17.

⁴⁸ A number of commentators have criticised the *ad hoc* approach to the establishment of Sanctions Committees, arguing that the Council should adopt a more comprehensive, overall approach to the question of sanctions: see, e.g., Bianchi, Andrea, 'Ad-hocism and the Rule of Law' (2002) 13 *EJIL* 263-72; Minear, Larry, Cortright, David, Wagler, Julia, Lopez, George A., & Weiss, Thomas G., *Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System* (1998) Thomas J. Watson Jr. Institute for International Studies, Providence, RI, xxxvi; Reisman, W. Michael & Stevick, Douglas L., 'The Applicability of International Law Standards to United Nations Economic Sanctions Programmes' (1998) 9 *EJIL* 86-141.

⁴⁹ For details relating to those particular actors, see Chapter 10.

⁵⁰ The approach of the Security Council to law enforcement generally has been described as "unsystematic and largely unconscious". See: Gowlland-Debbas, Vera, 'The Functions of the United Nations Security Council in the International Legal System' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 277-313, 311: ("Focusing on the practice of the Security Council in law enforcement ... illustrates how a political organ can contribute to the evolution of the international legal system, albeit in an unsystematic and largely unconscious fashion")

4. The legal framework governing the application of U.N. sanctions

to indicate the evolution of an organic U.N. sanctions system. The contours of that system, which continue to be shaped by the Security Council's actions in relation to each of its sanctions régimes, form the focus of analysis in Part III.

PART III. SANCTIONS IN PRACTICE: THE SECURITY COUNCIL'S USE OF SANCTIONS AND THE EVOLVING U.N. SANCTIONS SYSTEM

Part III describes how U.N. sanctions have operated in practice, charting the contours of the evolving U.N. sanctions system. Chapter 5 outlines the manner in which the Security Council's sanctions-related actions have led to the evolution of the U.N. sanctions system. It also contains a brief overview of each of the twenty mandatory sanctions régimes established to date by the Security Council. Chapter 6 reviews the manner in which the Council has established the legal basis for the application of sanctions. It thus describes how the Council has determined the existence of threats to the peace, breaches of the peace and acts of aggression, invoked Chapter VII of the Charter and articulated sanctions objectives. Chapter 7 surveys the manner in which the Council has delineated the scope of its sanctions régimes, applying different measures to suit different situations. Chapter 8 outlines some strategies the Council has employed to fine-tune the imposition of sanctions, including clarifying senders and targets, defining the temporal application of sanctions, and addressing the unintended consequences of sanctions upon civilian populations and third States. Chapter 9 focuses upon the manner in which the Council has established subsidiary bodies with responsibilities relating to the administration and monitoring of sanctions. Chapter 10 describes how the Council has also bestowed sanctions-related responsibilities upon other international actors, including for sanctions monitoring, implementation and enforcement.

5. The Security Council's many and varied sanctions régimes

This chapter introduces the U.N. sanctions system. Section 5.1 outlines the manner in which the Security Council's sanctions-related actions have led to the evolution of the U.N. sanctions system. Section 5.2 provides an overview of the twenty U.N. sanctions régimes established by the Security Council to date.

5.1 The Security Council's sanctions practice and the evolution of the U.N. sanctions system

Since its creation, the U.N. Security Council has imposed mandatory sanctions in accordance with its sanctions powers on twenty occasions.¹ As noted in the previous chapter, the Council's approach to the application of sanctions has been *ad hoc* rather than systematic. Nevertheless, despite the absence of a pre-designed framework for the implementation of sanctions, the Security Council has, through its use of sanctions, spawned a complex network of sanctions-related actors and sanctions-specific legal obligations which, taken together, constitute an evolving, albeit rudimentary, sanctions system. In its role as the creator and overseer of U.N. sanctions, the Security Council engages in a form of quasi-legislative activity.² Through the adoption of resolutions and other decisions,³ the

¹ For overviews of the twenty sanctions régime, see section 5.2, below. For more detailed summaries, see the Appendices.

² For further discussion of the quasi-legislative nature of certain Security Council decisions, see the references noted in Chapter 2, section 2.1.

³ The Council usually adopts its decisions in the form of resolutions. Occasionally, however, its decisions take the form of a presidential statement or a letter or note by the President of the Security Council. For discussion of what constitutes a decision of the Council and when those "decisions" are considered binding, see: Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council* (3rd ed. 1998) Clarendon Press, Oxford, 263-73.

Council shapes each sanctions régime, sculpting the parameters both of the sanctions régime itself and of the legal framework governing that régime.

When the Council imposes a new sanctions régime, it generally identifies a threat to or breach of international peace and security, outlines the objectives of the sanctions régime, defines the scope of the measures to be applied, and stipulates which parties are obliged to implement the sanctions. In its formative sanctions decisions, the Council has also clarified the steps which a target must take in order for the sanctions to be suspended or terminated, created subsidiary organs to facilitate sanctions implementation, and identified a time-limit, after which either the sanctions régime will expire or the Security Council will review the sanctions in order to decide whether they should continue.

The Security Council generally delegates the responsibility for the day-to-day administration of that régime to a subsidiary organ, most often a Sanctions Committee. It has also established other sanctions-related subsidiary bodies, including Panels of Experts, Monitoring Mechanisms and Special Commissions, to administer and monitor the implementation of sanctions. These subsidiary bodies generally undertake responsibilities that are specific to an individual sanctions régime, rather than having a broader, system-wide focus connected with the implementation of sanctions in general.⁴ Thus, once a sanctions régime has been established, the Council's role subsequently becomes one of oversight. In its oversight role, the Council responds to developments on the ground, expanding the scope of the sanctions if necessary to induce the compliance of a non-compliant target, or contracting the scope of the sanctions in order to reward partial compliance. In instances

⁴ An exception to this tendency was the establishment of the Informal Working Group of the Security Council on General Issues of Sanctions (the "Working Group on Sanctions"). For further discussion of that Working Group, see Chapter 9, section 9.2.

where the objectives of a sanctions régime have been partially or fully achieved, the Council might also decide to suspend or terminate the sanctions.

5.2 The Security Council's many and varied sanctions régimes

The Security Council has established twenty mandatory U.N. sanctions régimes, the vast majority of which were initiated after the conclusion of the Cold War. Despite the frequent occurrence between 1945 and 1989 of conflicts which could have been considered threats to the peace, breaches of the peace, or acts of aggression, thus potentially warranting the application of sanctions, the Council was able to reach the necessary consensus to impose sanctions on just two occasions - against the illegal white minority régime in Southern Rhodesia and against South Africa. By contrast, since the end of the Cold War no less than eighteen sanctions régimes have been established. In the 1990s, the Security Council established fourteen sanctions régimes, against: Iraq, the former Yugoslavia, Somalia, Libya, the Federal Republic of Yugoslavia (Serbia-Montenegro), Liberia, the Bosnian Serbs, Haiti, the Angolan rebel group the National Union for the Total Independence of Angola ("UNITA"), Rwanda, the Sudan, Sierra Leone, the Federal Republic of Yugoslavia, and Afghanistan/the Taliban/Al Qaida. Since the beginning of the twenty-first century, the Council has initiated four further sanctions régimes, against Ethiopia and Eritrea, Liberia (for the second time), certain actors in the Democratic Republic of the Congo (DRC), and Liberia (for the third time).

This section contains a brief summary of each of the twenty mandatory sanctions régimes established by the Security Council to date. The summaries are arranged in accordance with the chronological order in which the sanctions régimes were created, and they contain the key information about each régime, including when and why sanctions were

established, what type of sanctions were applied, and whether the sanctions have been terminated or remain in place at the time of writing.⁵

5.2.1 The Southern Rhodesia sanctions régime

The Security Council established its first mandatory non-military sanctions régime in December 1966, imposing a range of measures against the white minority régime that had taken control of Southern Rhodesia in November 1965.⁶ The major objectives of the Southern Rhodesia sanctions régime were to end the reign of the minority régime,⁷ and to enable the self-determination and independence of the Southern Rhodesian people.⁸ The régime initially consisted of a range of targeted trade sanctions, but it was subsequently expanded to incorporate a blend of comprehensive trade sanctions, as well as financial, representative and aviation sanctions.⁹ In December 1979, shortly after the minority régime

⁵ For more detailed accounts of the régimes as a whole, see the Appendices, which identify the following characteristics for each régime: constitutional basis; objectives; scope; actors involved in administration, implementation and enforcement; and "notable aspects".

⁶ S/RES/232 (16 December 1966). A year earlier the Council had imposed voluntary sanctions upon Southern Rhodesia, calling upon all States to impose diplomatic, arms and oil sanctions against the illegal régime. See: S/RES/217 (20 November 1965), operative paragraphs 6 (calling upon all States not to recognize the illegal régime nor entertain diplomatic relation with it), 8 (calling upon all States to desist from providing the illegal régime with arms, equipment and military material, and to break off economic relations, including by imposing an embargo on oil and petroleum products).

⁷ See, e.g., S/RES/232 (16 December 1966), preambular paragraph 2; S/RES/253 (29 May 1968), preambular paragraph 3 and operative paragraph 3; S/RES/277 (18 March 1970), operative paragraph 9; S/RES/288 (17 November 1970), operative paragraph 2; S/RES/326 (2 February), operative paragraph 4; S/RES/423 (14 March 1978), in general.

⁸ See, e.g., S/RES/232 (16 December 1966), operative paragraph 4; S/RES/253 (29 May 1968), preambular paragraphs 7, 8, operative paragraph 2; S/RES/277 (18 March 1970), preambular paragraph 5, operative paragraph 4; S/RES/288 (17 November 1970), preambular paragraph 4, operative paragraph 2; S/RES/318 (28 July 1972), operative paragraphs 1, 2; S/RES/326 (2 February), preambular paragraph 3; S/RES/328 (10 March 1973), preambular paragraph 7, operative paragraph 3; S/RES/386 (17 March 1976), preambular paragraph 4; S/RES/403 (14 January 1977), preambular paragraph 3; S/RES/424 (17 March 1978), preambular paragraph 4; S/RES/445 (8 March 1979), preambular paragraph 8; S/RES/448 (30 April 1979), preambular paragraph 7; S/RES/460 (21 December 1979), operative paragraph 1; S/RES/463 (2 February 1980), operative paragraph 1.

⁹ For discussion of the different types of sanctions applied by the Council in its various régimes, see Chapter 7. For the provisions outlining the scope of the Southern Rhodesia sanctions

relinquished control of Southern Rhodesia and thirteen years after sanctions were first applied, the Security Council terminated the Southern Rhodesia sanctions régime.¹⁰

5.2.2 The South Africa sanctions régime

The Security Council imposed a mandatory arms embargo against South Africa in November 1977,¹¹ with the aim of restricting the South African Government's ability to threaten international peace and security.¹² Among additional goals also articulated by the Council while the sanctions were in place were bringing about the elimination of the policy of *apartheid*,¹³ the establishment of a democratic society;¹⁴ and the enjoyment of equal rights by all South African citizens.¹⁵ Despite many calls to strengthen the sanctions, not least of which came from the U.N.'s own General Assembly,¹⁶ the Council did not subsequently

régime, including relevant exemptions, see: S/RES/232 (16 December 1966), operative paragraph 2; S/RES/253 (29 May 1968), operative paragraphs 3-6; S/RES/277 (18 March 1970), operative paragraphs 2, 9; S/RES/388 (6 April 1976), operative paragraphs 1, 2; S/RES/409 (27 May 1977), operative paragraph 1.

¹⁰ The sanctions régime against Southern Rhodesia was terminated by S/RES/460 (21 December 1979), operative paragraph 2.

¹¹ For the Security Council resolution establishing the South Africa sanctions régime, see: S/RES/418 (4 November 1977), operative paragraphs 2, 4.

¹² S/RES/418 (4 November 1977), operative paragraphs 1 and 2; S/RES/558 (13 December 1984), preambular paragraphs 4, 5.

¹³ S/RES/418 (4 November 1977), preambular paragraph 1; S/RES/473 (13 June 1980), preambular paragraph 7, operative paragraph 4, 7; S/RES/569 (26 July 1985), operative paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7; S/RES/765 (16 July 1992), operative paragraph 7.

¹⁴ See, e.g., S/RES/473 (13 June 1980), preambular paragraph 7, operative paragraph 4; S/RES/569 (26 July 1985), preambular paragraph 5, operative paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7.

¹⁵ See, e.g., S/RES/473 (13 June 1980), preambular paragraph 7, operative paragraphs 4 and 7; S/RES/569 (26 July 1985), preambular paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7.

¹⁶ Beginning in 1977, the General Assembly adopted annual resolutions urging the Security Council to strengthen the mandatory sanctions régime. See, e.g., A/RES/32/105 (14 December 1977), Section G, operative paragraph 1; A/RES/33/183 (24 January 1979), Section E; A/RES/34/93 (12 December 1979), Sections C, D, F; A/RES/35/206 (16 December 1980), Section C; A/RES/36/172 (17 December 1981), Sections B, D; A/RES/37/69 (9 December 1982), Section C; A/RES/38/39 (5 December 1983), Section D; A/RES/39/72 (13 December 1984), Section A; A/RES/40/64 (10 December 1985), Section A; A/RES/41/35 (10 November 1986), Section B; A/RES/42/23 (20 November 1987), Section C; A/RES/43/50 (5 December 1988), Section C;

modify the South African sanctions régime. The sanctions were eventually terminated in 1994, after free and fair elections had been held and Nelson Mandela had been inaugurated as the President of South Africa.¹⁷

5.2.3 The Iraq sanctions régime

The Security Council imposed sanctions against Iraq in August 1990, four days after that State had invaded Kuwait.¹⁸ The Iraq sanctions régime, which had the initial aim of securing Iraq's withdrawal from Kuwait,¹⁹ consisted of comprehensive economic and financial sanctions.²⁰ The sanctions were retained after the conclusion of the Gulf War, with their objectives becoming to bring about the establishment of a Compensation Commission to administer reparations claims arising from the Gulf War, and to disarm Iraq of nuclear, chemical and biological weapons, as well as of anti-ballistic missiles with a range of greater than 150 km.²¹ In May 2003, after Saddam Hussein's Government had been toppled by invading forces led by the United States, the Security Council terminated many of the

A/RES/44/27 (22 November 1989), Section C; A/RES/45/176 (19 December 1990), Sections B, F; A/RES/46/79 (13 December 1991), Section E; A/RES/47/116 (18 December 1992), Section D. The General Assembly's calls upon the Security Council to strengthen the sanctions régime ceased in 1993, when the General Assembly adopted a resolution welcoming the process of transition to democracy that had begun in South Africa and lifting the sanctions which it had called upon Member States to apply against the Government of South Africa: see A/RES/48/1 (8 October 1993).

¹⁷ S/RES/919 (25 May 1994), operative paragraph 1.

¹⁸ For the Security Council resolution establishing the Iraq sanctions régime, see: S/RES/661 (6 August 1990).

¹⁹ S/RES/661 (6 August 1990), operative paragraph 2.

²⁰ S/RES/661 (6 August 1990), operative paragraphs 3-4. For subsequent provisions clarifying or modifying the scope of the Iraq sanctions régime, including the application of relevant exemptions, see: S/RES/666 (13 September 1990); S/RES/670 (25 September 1990), operative paragraphs 3-6; S/RES/687 (3 April 1991), operative paragraphs 20, 23-4; S/RES/706 (15 August 1991), operative paragraphs 1-2; S/RES/778 (2 October 1992), operative paragraph 1; S/RES/986 (14 April 1995), operative paragraphs 1-2, 7-10; S/RES/1137 (12 November 1997), operative paragraph 4; S/RES/1409 (14 May 2002), operative paragraph 2; S/RES/1454 (30 December 2002), operative paragraph 1; S/RES/1483 (22 May 2003), operative paragraphs 10, 23.

²¹ S/RES/687 (3 April 1991), operative paragraphs 8-10, 12, 22.

sanctions, whilst retaining a general arms embargo and imposing new, targeted financial sanctions against members of the former Hussein régime and their immediate family members.²²

5.2.4 The former Yugoslavia sanctions régime

The Security Council imposed sanctions against Yugoslavia in September 1991, in an attempt to address the conflict that soon led to the dissolution of that State.²³ The régime, which consisted of a general arms embargo,²⁴ was maintained after the dissolution of Yugoslavia, becoming a general arms embargo against all of the successor States of the former Yugoslavia.²⁵ The Council did not make any major subsequent modifications to the régime,²⁶ and it was eventually terminated in June 1996 after the signing of the Dayton Peace Agreement and the entry into force of a regional arms control agreement.²⁷

²² S/RES/1483 (22 May 2003), operative paragraphs 10, 23.

²³ For the Security Council resolution establishing the former Yugoslavia sanctions régime, see: S/RES/713 (25 September 1991).

²⁴ S/RES/713 (25 September 1991), operative paragraph 6.

²⁵ By resolution 727 (1992), of 8 January 1992, adopted after the disintegration of the Socialist Federal Republic of Yugoslavia, the Council had reaffirmed the embargo and decided that it would apply in accordance with paragraph 33 of the further report of the Secretary-General pursuant to resolution 721 (1991), such that it would continue to apply to "all areas that have been part of Yugoslavia, any decisions on the question of the recognition of the independence of certain republics notwithstanding." See: S/RES/727 (8 January 1992), operative paragraph 6; S/23363 and Add.1 (5 and 7 January 1992): *Further report of the Secretary-General pursuant to resolution 721 (1991)*, paragraph 33.

²⁶ For decisions affecting the application of exemptions from the sanctions, however, see: S/RES/743 (21 February 1992); S/RES/1031 (15 December 1995).

²⁷ For the resolution providing for the régime's termination upon the effective implementation of a regional arms control agreement that was part of the Dayton Peace Agreement, see: S/RES/1021 (22 November 1995), operative paragraph 1. The régime was ultimately terminated upon notification by the Chairman of the Yugoslavia Sanctions Committee that the regional arms control agreement was operating effectively: see SCA/8/96(4) (18 June 1996): *Note verbale from the Chairman of the 724 Committee to all States*.

5.2.5 The Somalia sanctions régime

The Security Council imposed sanctions against Somalia in January 1992, with the aim of establishing peace and stability in that country.²⁸ The Somalia sanctions régime initially consisted of a general arms embargo.²⁹ There have been no major modifications to the régime, which remains in place at the time of writing, but in July 2002 the Council clarified that the embargo prohibited the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities.³⁰ The Council has also outlined a number of exemptions from the régime, for equipment and clothing used by humanitarian workers.³¹

5.2.6 The Libya sanctions régime

The Security Council established sanctions against Libya in March 1992, with the objective of ensuring that the Libyan Government cooperated with investigations into the terrorist bombings of two international flights – American airline Pan Am's flight 103, over Lockerbie, Scotland, and of the French airline UTA's flight 772, over Niger – and renounced terrorism.³² The Libya sanctions régime initially consisted of an arms embargo

²⁸ For the Security Council resolution establishing the Somalia sanctions régime, see: S/RES/733 (23 January 1992).

²⁹ S/RES/733 (23 January 1992), operative paragraph 5.

³⁰ S/RES/1425 (22 July 2002), operative paragraph 2.

³¹ For provisions affecting the application of exemptions from the sanctions, see: S/RES/1356 (19 June 2001), operative paragraphs 2-4; S/RES/1425 (22 July 2002), operative paragraph 1.

³² For the Security Council resolution establishing the Libya sanctions régime, see: S/RES/748 (31 March 1992). Pan Am flight 103 was destroyed above Lockerbie in Scotland in December 1988, resulting in 270 deaths. UTA flight 772 was destroyed on 19 September 1989, resulting in 171 deaths. For further details relating to these events, see: S/1999/726 (30 June 1999): *Report of the Secretary-General Submitted Pursuant to Paragraph 16 of Security Council Resolution 883 (1993) and Paragraph 8 of Resolution 1192 (1998)*, paragraphs 15, 16. The governments of the UK and the US had been investigating the fate of Pan Am flight 103 and the French government had been investigating the fate of UTA flight 772, and their investigations had led them to suspect that Libyan citizens had been involved in the bombings. See, e.g., S/23306 (31 December 1991), annex (containing a communiqué from the Presidency of the French Republic

and aviation, travel and diplomatic sanctions.³³ It was subsequently expanded in November 1993, to incorporate financial sanctions, further aviation sanctions, and sanctions against particular items used in the refinement and export of oil.³⁴ The sanctions were suspended in April 1999, after Libya transferred two Lockerbie bombing suspects to the Netherlands for trial before a Scottish court.³⁵ They were eventually terminated in September 2003, after the Libyan Government had sent a letter to the President of the Security Council outlining the steps taken by it to comply with its obligations under the sanctions régime, including accepting responsibility for the actions of Libyan officials, paying appropriate compensation, renouncing terrorism, and committing to cooperating with requests for further information.³⁶

5.2.7 The sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro)

The Security Council imposed sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) in May 1992, in order to induce it to cease engaging in acts of

and the Ministry of Foreign Affairs, stating that the judicial enquiry conducted into the attack on flight UTA 772 placed "heavy presumptions of guilt" on Libyan nationals) and S/23308 (31 December 1991), annex (containing a Statement issued by the United States Government and a Joint Declaration of the United States and the United Kingdom, demanding that the Libyan Government surrender for trial those charged with the bombing of Pan Am 103 and pay appropriate compensation).

³³ S/RES/748 (31 March 1992), operative paragraphs 4-6.

³⁴ S/RES/883 (11 November 1993), operative paragraphs 3-6.

³⁵ The Security Council provided for the possibility that the sanctions might be suspended in S/RES/1192 (27 August 1998), operative paragraph 8. The sanctions were subsequently suspended when the Secretary-General reported that the conditions for suspension had been satisfied: S/1999/378 (5 April 1999): *Letter Dated 5 April from the Secretary-General Addressed to the President of the Security Council*; S/PRST/1998/10 (8 April 1999) *Presidential Statement of 8 April 1999*.

³⁶ The sanctions were terminated in: S/RES/1506 (12 September 2003), operative paragraph 1. For the text of the letter itself, see: S/2003/818 (15 August 2003): *Letter dated 15 August 2003 from the representative of the Libyan Arab Jamahiriya addressed to the President of the Security Council*.

interference in Bosnia and Herzegovina.³⁷ The sanctions régime initially consisted of a complex blend of economic, financial, diplomatic, sporting and cultural sanctions.³⁸ The sanctions were subsequently modified on a number of occasions.³⁹ The major modifications were designed first to strengthen the implementation of sanctions in order to secure improved compliance,⁴⁰ and then subsequently to relax certain aspects of the sanctions in order to reward such improved compliance.⁴¹ The sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro) was eventually terminated in October 1996, after free and fair elections had been held in Bosnia and Herzegovina.⁴²

³⁷ For the Security Council resolution establishing the Federal Republic of Yugoslavia (Serbia-Montenegro) sanctions régime, see: S/RES/757 (30 May 1992). The specific objective of the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro) was to bring about compliance with demands that had been outlined by the Council two weeks earlier, including: adherence to a cease-fire; cooperation with the peace process being initiated by the European Community; and the effective withdrawal, disbandment or disarmament of all military forces operating in Bosnia and Herzegovina, with the exception of the United Nations Protection Force and the forces of the government of Bosnia and Herzegovina. For the original text of those demands, see: S/RES/752 (15 May 1992), operative paragraphs 1-5. When the Council applied sanctions, it stated that the sanctions would be terminated once authorities in the Federal Republic of Yugoslavia (Serbia-Montenegro) had taken effective measures to comply with those demands. See: S/RES/757 (30 May 1992), operative paragraph 3.

³⁸ S/RES/757 (30 May 1992), operative paragraphs 4-8.

³⁹ For subsequent modifications to the régime, including the provision of exemptions, see: S/RES/760 (18 June 1992); S/RES/787 (16 November 1992); S/RES/820 (17 April 1993); S/RES/943 (23 September 1994); S/RES/967 (14 December 1994); S/RES/992 (11 May 1995).

⁴⁰ The Security Council made such modifications in November 1992 and April 1993. See: S/RES/787 (16 November 1992), operative paragraph 9 (strengthening the application of the economic sanctions); S/RES/820 (17 April 1993), operative paragraphs 15-16, 21, 23-5, 27-8 (strengthening the application of both the economic and financial sanctions).

⁴¹ S/RES/943 (23 September 1994), operative paragraph 1 (suspending the sporting and cultural sanctions, as well as sanctions against civilian, non-cargo carrying aircraft and ferries). The suspensions were temporary, but they were subsequently extended on multiple occasions until the sanctions régime was terminated as a whole. See: S/RES/970 (12 January 1995), operative paragraph 1; S/RES/988 (21 April 1995), operative paragraph 1; S/RES/1003 (5 July 1995), operative paragraph 1; S/RES/1015 (15 September 1995), operative paragraph 1.

⁴² For the resolution terminating the régime, see: S/RES/1074 (1 October 1996), operative paragraph 2.

5.2.8 The first Liberia sanctions régime

The Security Council imposed a mandatory arms embargo against Liberia in late-1992, in an attempt to bring about the establishment of peace and stability.⁴³ The first Liberia sanctions régime was applied for almost a decade. Although the Security Council frequently called upon States throughout the duration of the sanctions régime to comply with and implement the arms embargo,⁴⁴ thus demonstrating its concern about sanctions violations, it did not make any subsequent modifications to the sanctions régime. The régime was eventually terminated in March 2001, when the Council replaced it immediately with a more extensive sanctions régime, designed to induce the Liberian Government to cease providing support to rebel groups in Sierra Leone.⁴⁵

5.2.9 The sanctions régime against the Bosnian Serbs

In April 1993, following a series of attacks by Bosnian Serb paramilitary forces against towns in eastern Bosnia including Srebrenica, the Security Council applied sanctions against the Bosnian Serbs,⁴⁶ with the objective of inducing Bosnian Serb participation in the Bosnian peace plan.⁴⁷ The Bosnian Serb sanctions régime initially consisted of

⁴³ S/RES/788 (19 November 1992), operative paragraph 8.

⁴⁴ See, e.g., S/RES/813 (26 March 1993), operative paragraph 9; S/RES/950 (21 October 1994), operative paragraph 6; S/RES/972 (13 January 1995), operative paragraph 6; S/RES/1001 (30 June 1995), operative paragraph 10; S/RES/1014 (15 September 1995), operative paragraph 11; S/RES/1020 (10 November 1995), operative paragraph 11; S/RES/1041 (29 January 1996), operative paragraph 14; S/PRST/1996/16: *Presidential statement of 9 April 1996*; S/PRST/1996/22: *Presidential statement of 6 May 1996*; S/RES/1059 (31 May 1996), operative paragraph 11; S/RES/1071 (30 August 1996), operative paragraph 12; S/RES/1083 (27 November 1996), operative paragraph 10; S/RES/1100 (27 March 1997), operative paragraph 9; S/RES/1116 (27 June 1997), operative paragraph 7.

⁴⁵ For the provisions terminating the régime and establishing the second Liberia sanctions régime, see: S/RES/1343 (7 March 2001), operative paragraphs 1 (terminating the first Liberia sanctions régime), 5-7 (imposing the second Liberia sanctions régime). For details relating to the second Liberia sanctions régime, see summary R, below.

⁴⁶ S/RES/820 (17 April 1993), operative paragraph 12.

⁴⁷ S/RES/820 (17 April 1993), operative paragraphs 10 and 31.

comprehensive sanctions.⁴⁸ The implementation of the sanctions was subsequently strengthened in September 1994, with the imposition of additional targeted economic, financial and travel sanctions.⁴⁹ The sanctions against the Bosnian Serbs were suspended on 27 February 1996, after the Security Council was informed that Bosnian Serb forces had withdrawn from the zones of separation established in the Peace Agreement.⁵⁰ The régime was ultimately terminated in October 1996, once free and fair elections had been held in Bosnia and Herzegovina.⁵¹

5.2.10 The Haiti sanctions régime

The Security Council imposed sanctions against Haiti in June 1993, in order to bring about the reinstatement of the democratically-elected government of President Jean-Bertrand Aristide.⁵² The Haiti sanctions régime initially consisted of targeted petroleum, arms

⁴⁸ S/RES/820 (17 April 1993), operative paragraph 12 (deciding that “import to, export from, and transshipment through ... areas under the control of the Bosnian Serb forces, with the exception of essential humanitarian supplies, including medical supplies and foodstuffs distributed by international humanitarian agencies, shall be permitted only with the proper authorization from ... the Government of the Republic of Bosnia and Herzegovina”). Although the Council did not explicitly articulate the items for which import to, export from and transshipment through the areas of Bosnia and Herzegovina under the control of Bosnian Serb forces would be prohibited, it is likely, considering the Council’s previous practice in relation to the sanctions régimes against Southern Rhodesia, Iraq and the Federal Republic of Yugoslavia (Serbia-Montenegro), that the intention was to prohibit transshipment of products and commodities.

⁴⁹ S/RES/942 (23 September 1994), operative paragraphs 7, 11-15.

⁵⁰ S/1996/946 (15 November 1996), annex: *Final Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia*, paragraph 4(h) (referring to letters that the 724 Committee had sent to States and international organizations: SCA/8/96(2); SCA/8/96(2-1)). In November 1995 the Council had provided for the possibility that the sanctions might be suspended if Bosnian Serb forces withdrew behind zones of separation established in the Bosnia Peace Agreement and implemented their obligations under that Agreement. See: S/RES/1022 (22 November 1995), operative paragraphs 2, 3.

⁵¹ S/RES/1074 (1 October 1996), operative paragraph 2. The Council had decided that the sanctions régime would be terminated upon the occurrence of free and fair elections the previous November. See: S/RES/1022 (22 November 1995), operative paragraph 4.

⁵² For the Security Council resolution establishing the Haiti sanctions régime, see: S/RES/841 (15 June 1993).

and financial sanctions.⁵³ It was suspended for a short period from 27 August to 13 October 1993, when it appeared that the *de facto* authorities in Haiti were complying with the Council's demands to implement two peace agreements – “the Governor's Island Agreement” and “the New York Pact”.⁵⁴ Sanctions were reimposed, however, once it became clear that the compliance of the *de facto* authorities had been only partial and temporary.⁵⁵ In May 1994 the Council strengthened the sanctions considerably, imposing comprehensive economic sanctions and targeted aviation and travel sanctions.⁵⁶ At the end of September 1994, the Council decided that the sanctions would be terminated upon the return of President Aristide to Haiti.⁵⁷ They thus terminated on October 15th, 1996, after President Aristide's arrival in Haiti.⁵⁸

5.2.11 The UNITA sanctions régime

The Security Council imposed sanctions against the Angolan rebel group the National Union for the Total Independence of Angola (“UNITA”) in September 1993, with the aim of ensuring that it stopped fighting and adhered to its commitments under a set of peace accords, entitled the “Acordos de Paz”.⁵⁹ The UNITA sanctions régime initially consisted of arms and petroleum sanctions.⁶⁰ It was subsequently expanded on two

⁵³ S/RES/841 (15 June 1993), operative paragraphs 5, 7-8.

⁵⁴ S/RES/861 (27 August 1993), operative paragraph 1.

⁵⁵ S/RES/873 (13 October 1993), operative paragraphs 1-3.

⁵⁶ S/RES/917 (6 May 1994), operative paragraphs 2-3, 6-8.

⁵⁷ S/RES/944 (29 September 1994), operative paragraph 4.

⁵⁸ Early that day the Secretary-General sent a letter to the President of the Security Council confirming that President Aristide had returned to Haiti: S/1994/1169: *Letter dated 15 October 1994 from the Secretary-General addressed to the President of the Security Council*. The Council adopted a resolution immediately, welcoming President Aristide's return, as well as the fact that the sanctions would be lifted: S/RES/948 (15 October 1995), operative paragraphs 1, 10.

⁵⁹ For the resolution imposing sanctions against UNITA, see: S/RES/864 (15 September 1993).

⁶⁰ S/RES/864 (15 September 1993), operative paragraph 19.

occasions: in August 1997, when travel, representative and aviation sanctions were applied;⁶¹ and in June 1998, when financial and diamond sanctions and further representative sanctions were imposed.⁶² In May 2002, after the death of the UNITA leader Jonas Savimbi and when it appeared that the decades-long conflict between UNITA and the Angolan Government was drawing to a close, the Security Council narrowed the scope of the sanctions by suspending the travel sanctions against UNITA officials and their families.⁶³ The UNITA sanctions régime was terminated seven months later, in December 2002, after UNITA had taken significant steps to implement various peace agreements.⁶⁴

5.2.12 The Rwanda sanctions régime

The Security Council imposed sanctions against Rwanda in May 1994, in an attempt to address ongoing violence.⁶⁵ The Rwanda sanctions régime initially consisted of a general arms embargo against the territory of Rwanda.⁶⁶ Although no significant modifications have

⁶¹ S/RES/1127 (28 August 1997), operative paragraphs 45. The imposition of the additional sanctions was subsequently delayed until the end of October 1997. See: S/RES/1130 (29 September 1997), operative paragraph 2.

⁶² S/RES/1173 (12 June 1998), operative paragraphs 11-12. The date for the imposition of the additional sanctions was delayed slightly, until 1 July 1998. See: S/RES/1176 (24 June 1998), operative paragraph 2.

⁶³ S/RES/1412 (17 May 2002), operative paragraph 1. The suspension was for a period of ninety days. In August 2002, the Council subsequently extended the suspension twice before the sanctions régime was eventually terminated. See: S/RES/1432 (15 August 2002), operative paragraph 1; S/RES/1439 (18 October 2002), operative paragraph 1.

⁶⁴ S/RES/1448 (9 December 2002), operative paragraph 2. By preambular paragraph 3 of the same resolution, the Council welcomed the steps taken by the Angolan Government and UNITA toward the full implementation of the Acordos de Paz, the Lusaka Protocol, Security Council resolutions and other recent initiatives aimed at achieving peace, including: a Memorandum of Understanding dated 4 April 2002 [S/2002/483 (26 April 2002), annex]; a declaration on the peace process by the Angolan Government [S/2002/1337 (6 December 2002), annex]; and the completion of the work of a Joint Commission.

⁶⁵ For the Security Council resolution establishing the Rwanda sanctions régime, see: S/RES/918 (17 May 1994).

⁶⁶ S/RES/918 (17 May 1994), operative paragraph 13.

been made to the scope of the régime, which remains in place at the time of writing, the embargo no longer applies to the Rwandan Government.⁶⁷

5.2.13 The Sudan sanctions régime

The Security Council imposed sanctions against the Sudan in March 1996, with the objective of inducing the extradition of three suspects wanted in connection with an assassination attempt that had been made against President Mubarak, of Egypt, in Addis Abbaba, Ethiopia, in June 1995.⁶⁸ The Sudan sanctions régime initially consisted of diplomatic and targeted travel sanctions.⁶⁹ It was subsequently strengthened in August 1996, to include aviation sanctions.⁷⁰ In September 2001 the Security Council took note of steps taken by the Government of the Sudan to comply with its demands under the sanctions régime,⁷¹ as well as of a collection of correspondence it had received advocating the lifting of the sanctions against Sudan.⁷² It also welcomed the accession of Sudan to various international conventions for the suppression of terrorism,⁷³ and proceeded to terminate the sanctions.⁷⁴

⁶⁷ The application of the arms embargo was narrowed slightly in August 1995, from an embargo against the sale or supply of arms and related *matériel* to the territory of Rwanda in general, to an embargo against the sale or supply of arms and related *matériel* to non-Government entities in Rwanda or entities in States neighbouring who might forward them to non-Government entities in Rwanda. See: S/RES/1011 (16 August 1995), operative paragraphs 7-8, 11.

⁶⁸ For the Security Council resolution establishing the Sudan sanctions régime, see: S/RES/1054 (11 March 1996).

⁶⁹ S/RES/1054 (11 March 1996), operative paragraph 3.

⁷⁰ S/RES/1070 (16 August 1996), operative paragraph 3.

⁷¹ S/RES/1372 (28 September 2001), preambular paragraph 2.

⁷² S/RES/1372 (28 September 2001), preambular paragraphs 3-5.

⁷³ S/RES/1372 (28 September 2001), preambular paragraph 6.

⁷⁴ S/RES/1372 (28 September 2001), operative paragraph 1.

5.2.14 The Sierra Leone sanctions régime

The Security Council imposed sanctions against Sierra Leone in October 1997, with the aim of inducing the military junta which had come to power via a military *coup d'état* to return control of the country to the democratically-elected Government.⁷⁵ The Sierra Leone sanctions régime initially consisted of targeted travel sanctions, petroleum sanctions and an arms embargo.⁷⁶ In March 1998, shortly after the return to power of the Sierra Leone Government, the petroleum sanctions were terminated.⁷⁷ Then in June 1998, the remaining sanctions were terminated, but they were replaced immediately by new sanctions targeting the former military junta and leaders of the major rebel group in Sierra Leone – the Revolutionary United Front (RUF) – with the aim of re-establishing Government control throughout Sierra Leone and of ensuring the disarmament, demobilization and reintegration into the civilian population of soldiers from those groups.⁷⁸ The new sanctions consisted of an arms embargo and targeted travel sanctions.⁷⁹ The scope of the sanctions régime expanded in July 2000, when the Council imposed diamond sanctions.⁸⁰ The diamond sanctions, which were imposed for a period of limited duration, were extended for two additional periods before expiring in June 2003.⁸¹ The targeted arms embargo and travel sanctions remain in place at the time of writing.

⁷⁵ For the Security Council resolution establishing the Sierra Leone sanctions régime, see: S/RES/1132 (8 October 1997).

⁷⁶ S/RES/1132 (8 October 1997), operative paragraphs 5-6.

⁷⁷ S/RES/1156 (16 March 1998), operative paragraph 2.

⁷⁸ For the resolution terminating the existing sanctions and imposing the new sanctions, see: S/RES/1171 (5 June 1998), operative paragraphs 1 (terminating the remaining sanctions imposed by resolution 1132 (1997)), 2-5 (imposing the new sanctions).

⁷⁹ S/RES/1171 (5 June 1998), operative paragraphs 2-3, 5.

⁸⁰ S/RES/1306 (5 July 2000), operative paragraphs 1, 5-6.

⁸¹ For the extensions of the diamond sanctions, see: S/RES/1385 (19 December 2001), operative paragraph 3; S/RES/1446 (4 December 2002), operative paragraph 2. On 5 June 2003, the

5.2.15 The Federal Republic of Yugoslavia sanctions régime

The Security Council imposed sanctions against the Federal Republic of Yugoslavia in March 1998, after a period of rising tension between Serbian authorities and the Kosovar Albanian community and with the aim of fostering peace and stability in Kosovo.⁸² The “Kosovo sanctions régime” consisted of a general arms embargo.⁸³ The Council did not make any significant subsequent modifications to the sanctions,⁸⁴ and they were eventually terminated in September 2001, after the Council had determined that the Federal Republic of Yugoslavia had complied with the major requirements connected to the Kosovo sanctions régime.⁸⁵

5.2.16 The Afghanistan/Taliban/Al Qaida sanctions régime

The Security Council imposed sanctions against the Taliban régime in Afghanistan in October 1999, with the objective of ensuring that the Taliban surrendered for prosecution Usama Bin Laden and ceased providing sanctuary to international terrorists.⁸⁶ The Taliban

President of the Security Council noted in a press statement that the most recent period of extension had expired and reported that the members of the Council agreed not to renew the diamond sanctions, in light of the Government of Sierra Leone's increased efforts to manage its diamond industry and ensure proper control over diamond areas, and in light of its full participation in the Kimberley Process. See: SC/7778 (5 June 2003): *Press statement on the Sierra Leone Diamond Embargo by the President of the Security Council*.

⁸² For the Security Council resolution establishing the sanctions régime against the Federal Republic of Yugoslavia, which had been subject to an earlier sanctions régime under the name “the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/1160 (31 March 1998). For discussion of the initial sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see summary G, above.

⁸³ S/RES/1160 (31 March 1998), operative paragraph 8.

⁸⁴ For provisions affecting the application of exemptions from the sanctions régime, however, see: S/RES/1203 (24 October 1998), operative paragraph 15; S/RES/1244 (10 June 1999), operative paragraph 16.

⁸⁵ S/RES/1367 (10 September 2001), operative paragraph 1.

⁸⁶ For the Security Council resolution establishing the Taliban/Al Qaida sanctions régime, see: S/RES/1267 (15 October 1999).

sanctions régime initially consisted of financial and aviation sanctions,⁸⁷ however the objectives, scope, target and geographical application of the sanctions régime have evolved considerably since the sanctions were first applied. In December 2000, the scope of the sanctions régime against the Taliban expanded, to include further aviation sanctions, as well as arms, representative and chemical sanctions.⁸⁸ The Council also applied financial sanctions against Usama Bin Laden and his associates, including members of the organization Al Qaida.⁸⁹ On 15 January 2002, shortly after the defeat of the Taliban, the Council terminated aspects of the aviation and financial sanctions affecting the operations of the national Afghanistan airline, Ariana.⁹⁰ The next day, the Council revamped the sanctions régime, allowing the existing aviation sanctions to lapse, but imposing a new range of sanctions - of targeted financial, travel and arms sanctions - against the Taliban, Usama Bin Laden, Al Qaida, and individuals and entities associated with those parties.⁹¹ Moreover, the sanctions no longer concentrated predominantly upon activities taking place in Afghanistan, making the Taliban/Al Qaida sanctions régime the first U.N. sanctions régime to focus upon targets without a specific geographic base. Since January 2002, there has been no significant expansion in the scope of the Taliban/Al Qaida sanctions régime.⁹²

⁸⁷ S/RES/1267 (15 October 1999), operative paragraph 4.

⁸⁸ S/RES/1333 (19 December 2000), operative paragraphs 5, 8, 10-11.

⁸⁹ S/RES/1333 (19 December 2000), operative paragraphs 8.

⁹⁰ S/RES/1388 (15 January 2001), operative paragraphs 1-2.

⁹¹ S/RES/1390 (16 January 2002), operative paragraphs 1-2.

⁹² In December 2002, however, the Council did provide for the possibility of exemptions from the financial sanctions, where such funds, assets or resources were necessary for "basic" or "extraordinary" expenses. The Council also permitted States to allow frozen accounts to earn interest and receive outstanding payments owed prior to the application of the sanctions. See: S/RES/1452 (20 December 2002), operative paragraphs 1-2.

5.2.17 The sanctions régime against Ethiopia and Eritrea

The Security Council imposed sanctions against both Ethiopia and Eritrea in May 2000, in an attempt to induce them to cease hostilities and engage in a meaningful peace process.⁹³ The Ethiopia and Eritrea sanctions régime, which was imposed for an initial period of twelve months, consisted of arms sanctions, including a general arms embargo as well as a prohibition upon technical assistance or training related to the provision, manufacture, maintenance or use of arms and related *matériel*.⁹⁴ There were no major subsequent modifications to the Ethiopia and Eritrea sanctions régime.⁹⁵ On 15 May 2001, the Council adopted a presidential statement, confirming that the sanctions régime would expire the following day.⁹⁶ In that statement, the Council emphasized the importance of the Algiers Peace Agreement, which the parties had signed on 12 December 2000,⁹⁷ recognized that the signing of the Algiers Agreement was consistent with the objectives of the Ethiopia/Eritrea sanctions régime, and stated that it had not extended the sanctions beyond the expiration date of 16 May 2001.⁹⁸

5.2.18 The second Liberia sanctions régime

The Security Council imposed sanctions against Liberia for the second time in March 2001, with the objective of ensuring that the Liberian Government ceased providing

⁹³ For the Security Council resolution establishing the Ethiopia and Eritrea sanctions régime, see: S/RES/1298 (17 May 2000).

⁹⁴ S/RES/1298 (17 May 2000), operative paragraph 6.

⁹⁵ For decisions affecting the application of exemptions from the sanctions, however, see: S/RES/1312 (31 July 2000), operative paragraph 5; S/RES/1320 (15 September 2000), operative paragraph 10.

⁹⁶ S/PRST/2001/14 (15 May 2001): *Presidential statement of 15 May 2001*.

⁹⁷ S/2000/1183 (13 December 2000), *Identical letters dated 12 December 2000 from the representative of Algeria addressed to the Secretary-General and the President of the Security Council*, annex.

⁹⁸ S/PRST/2001/14 (15 May 2001): *Presidential statement of 15 May 2001*.

support for the Sierra Leonean rebel group the Revolutionary United Front (RUF).⁹⁹ The second Liberia sanctions régime initially consisted of arms, diamond and travel sanctions,¹⁰⁰ but its scope subsequently expanded to include timber sanctions and additional travel sanctions.¹⁰¹ With the improvement of the situation in Sierra Leone, the objective of the régime also broadened, to include the aim of inducing the Liberian Government to cease providing support to rebel groups in the region, including in Côte d'Ivoire.¹⁰² In December 2003, two and a half years after it initiated the second Liberia sanctions régime and three months after Charles Taylor had resigned as Liberian President and taken refuge in Nigeria, the Council terminated the second Liberia sanctions régime and replaced it with a third.¹⁰³

5.2.19 The sanctions régime against certain actors in the Democratic Republic of the Congo (DRC)

The Security Council imposed sanctions against certain actors in the DRC in July 2003, with the aim of fostering peace and stability and contributing to the implementation of the DRC peace process.¹⁰⁴ The DRC sanctions régime consists of arms sanctions, requiring

⁹⁹ For the Security Council resolution establishing the second Liberia sanctions régime, see: S/RES/1343 (7 March 2001).

¹⁰⁰ S/RES/1343 (7 March 2001), operative paragraphs 5-7. The arms, diamond and travel sanctions were all extended on two occasions. See: S/RES/1408 (6 May 2002), operative paragraph 5; S/RES/1478 (6 May 2003), operative paragraph 10.

¹⁰¹ S/RES/1478 (6 May 2003), operative paragraphs 17, 28.

¹⁰² In May 2002, when the Council extended the sanctions, it determined that the active support provided by the Liberian Government for armed rebel groups in the region, including the RUF, constituted a threat to international peace and security: S/RES/1408 (6 May 2002), preambular paragraph 11. In May 2003, when the Council again extended the initial sanctions and introduced additional timber and travel sanctions, it determined that the active support provided by the Liberian Government for armed rebel groups in the region, including to rebels in Côte d'Ivoire and former RUF combatants who continued to destabilize the region, constituted a threat to international peace and security: S/RES/1478 (6 May 2003), preambular paragraph 13.

¹⁰³ S/RES/1521 (22 December 2003), operative paragraph 1. For details concerning the third Liberia sanctions régime, see summary T, below.

¹⁰⁴ For the Security Council resolution establishing the DRC sanctions régime, see: S/RES/1493 (28 July 2003).

all States to prevent the supply of arms and related *matériel* and the provision of military assistance, advice or training, to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, as well as to groups in the DRC that are not party to the “Global and all-inclusive agreement”.¹⁰⁵

5.2.20 The third Liberia sanctions régime

The Security Council established a third sanctions régime against Liberia in December 2003, with the aim of securing the implementation of a ceasefire and a Comprehensive Peace Agreement, bringing about the establishment of an effective Certificate of Origin régime for trade in Liberian diamonds, and ensuring that the Transitional Government of Liberia gained full authority and control over Liberian timber producing areas, and that government timber revenues were used for the benefit of the Liberian people.¹⁰⁶ The new sanctions régime initially consisted of arms, travel, diamond and timber sanctions.¹⁰⁷ In March 2004, the Council also imposed financial sanctions against former President Taylor and his immediate family and former senior colleagues.¹⁰⁸

¹⁰⁵ S/RES/1493 (28 July 2003), operative paragraph 20.

¹⁰⁶ For the Security Council resolution establishing the third Liberian sanctions régime, see: S/RES/1521 (22 December 2003).

¹⁰⁷ S/RES/1521 (22 December 2003), operative paragraphs 2, 4, 6, 10.

¹⁰⁸ S/RES/1532 (12 March 2004), operative paragraph 1.

6. *Establishing the legal basis for sanctions: identifying threats, invoking Chapter VII, and setting objectives*

This chapter contains two main sections. The first section outlines the manner in which the Security Council has identified the existence of threats to the peace, breaches of the peace or acts of aggression in situations where it has proceeded to apply sanctions. The second section describes the different types of objectives for which the Council has applied sanctions.

6.1 *Determining the existence of a threat to the peace, breach of the peace or act of aggression*

As noted in Chapter 4, Article 39 of the Charter of the United Nations requires the Security Council to determine the existence of any threat to the peace, breach of the peace, or act of aggression and to decide what measures shall be taken, including the application of sanctions, in order to maintain or restore international peace and security. Although the Council has rarely invoked Article 39 explicitly in its sanctions-related decisions,¹ it has nevertheless made a determination of the type envisaged by Article 39 in connection with each of the sanctions régimes established to date.² In characterising the nature of the various situations in response to which it has been necessary to establish a sanctions régime, the Council has almost exclusively made findings of a threat to the peace, making only one

¹ The Council expressly invoked both Articles 39 and 41 of the Council as the basis for its action when it imposed its first mandatory sanctions régime, against the illegal minority régime in Southern Rhodesia. See: S/RES/232 (16 December 1966), preambular paragraph 4.

² The provisions outlining the Council's relevant determinations are contained in the analysis in sections B-D, below. For discussion of whether the Council must determine the existence of a threat to the peace, breach of the peace or act of aggression prior to applying sanctions, see section 6.1.1, below.

determination of a breach of the peace³ and no clear determination of an act of aggression.⁴

The following sections analyse the Council's sanctions-related practice with respect to determinations of the kind envisaged by Article 39. Section A explores whether the Security Council must make a prior determination of a threat to the peace, breach of the peace or act of aggression before imposing sanctions. Sections B, C and D then outline the Council's sanctions-related determinations of a threat to the peace, breach of the peace, and act of aggression.

6.1.1 The question of whether the Council must make a determination of a threat to the peace, breach of the peace, or act of aggression prior to imposing sanctions

As noted in Chapter 4, before the Security Council applies sanctions it should first determine the existence of a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter. In practice, however, while the Council has made a determination of the type envisaged by Article 39 in connection with each sanctions régime established to date,⁵ on two occasions it did not do so until the sanctions had already been imposed. In its resolutions establishing the sanctions régimes against the Bosnian Serbs and the Federal Republic of Yugoslavia, respectively, the Council noted that it was acting

³ The Council made such a determination before applying sanctions against Iraq. See: S/RES/660 (2 August 1990), preambular paragraph 2. For further discussion of that determination, see section 6.1.3, below.

⁴ Nevertheless, despite the fact that the Council is yet to make an explicit determination of an act of aggression warranting the application of sanctions, it has made a number of references to "aggressive acts" and "acts of aggression" by States that were already subject to U.N. sanctions, doing so in relation to both Southern Rhodesia and South Africa. For further discussion see section 6.1.4.

⁵ See the discussion in sections 6.1.2 - 6.1.4, below.

under Chapter VII and proceeded to apply sanctions, without having made a prior determination of a threat to the peace, breach of the peace or act of aggression.⁶

From a legal perspective, the Council's failure to make a determination of a breach or threat to the peace or an act of aggression prior to imposing sanctions was problematic. Did the absence of such a determination render the invocation of Chapter VII, and therefore the application of sanctions, illegitimate? Or might it be argued that the invocation of Chapter VII *de facto* amounted to an implicit determination of a threat to the peace? In the case of the Bosnian Serbs, the lack of a determination of a threat to the peace might have been due to the fact that the sanctions were imposed by a resolution whose primary focus was to strengthen the existing sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro).⁷ As the Council had already identified a threat to international peace and security in the situation in the former Yugoslavia in general, and in Bosnia and Herzegovina in particular, perhaps it did not consider it necessary to make another explicit determination of a threat. Another possibility is that, in the absence of an explicit statement that there did not exist a threat to the peace, breach of the peace or act of aggression, the Council's invocation of Chapter VII might be interpreted to amount to an implicit determination of a threat to the peace, breach of the peace, or act of aggression.⁸ In any event, the Council

⁶ In relation to the sanctions against the Bosnian Serbs, see: S/RES/820 (17 April 1993), Section B, preambular paragraph 2 (invoking Chapter VII); S/RES/820 (17 April 1993), operative paragraph 12 (applying comprehensive sanctions against the Bosnian Serbs). In relation to the sanctions against the Federal Republic of Yugoslavia to address the situation in Kosovo, see: S/RES/1160 (31 March 1998), preambular paragraph 8 (invoking Chapter VII), operative paragraph 8 (applying an arms embargo against the Federal Republic of Yugoslavia, including Kosovo).

⁷ The main purpose of resolution 820 (1993) was to strengthen the implementation of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro): see S/RES/820 (17 April 1993), in general.

⁸ For further discussion of this possibility, see the following discussion of the case of the sanctions against the Federal Republic of Yugoslavia to address the situation in Kosovo.

subsequently made multiple explicit determinations of a threat to the peace in decisions connected to the sanctions against the Bosnian Serbs.⁹

In the case of the sanctions régime applied against the Federal Republic of Yugoslavia to address the situation in Kosovo, the Council's failure to make such a determination can be attributed to the positions of the Russian and Chinese delegations, which did not consider the situation in Kosovo to constitute a threat to regional or international peace and security.¹⁰ Given that two of the permanent members of the Security Council maintained this position, it is puzzling that the Security Council was able to adopt the decision imposing sanctions. When it came to the vote, China abstained, thus maintaining some consistency *vis-à-vis* its position on the lack of a threat to the peace.¹¹ It is very difficult, however, to reconcile the Russian position that there was no threat to the peace with its subsequent vote in favour of the resolution imposing sanctions.¹² One possible interpretation of the legal chain of events in the Kosovo instance is that a decision by the Security Council to invoke Chapter VII and impose sanctions must amount to an implicit determination of a threat to the peace, breach of the peace or act of aggression.¹³ In any

⁹ See: S/RES/942 (23 September 1994), preambular paragraph 7; S/RES/1022 (22 November 1995), preambular paragraph 10 (each determining that the situation in the former Yugoslavia constituted a threat to international peace and security).

¹⁰ See the Chinese and Russian statements before the Security Council on the occasion of the adoption of the resolution establishing the sanctions régime: S/PV.3868 (31 March 1998): *Provisional verbatim record of the 3868th meeting of the Security Council*, 10-11 (Russian Federation, contending that although the events in Kosovo had "an adverse regional impact", the situation in Kosovo did not constitute a threat to regional, much less international peace and security), 11-12 (China, stating that: "The question of Kosovo is, in its essence, an internal matter of the Federal Republic"; and observing: "We do not think that the situation in Kosovo endangers regional and international peace and security").

¹¹ For the vote on resolution 1160 (1998), see: S/PV.3868 (31 March 1998): *Provisional verbatim record of the 3868th meeting of the Security Council*, 12.

¹² See also the vote on resolution 1160 (1998): *ibid.*

¹³ The representative of the United Kingdom in fact made such an argument just after the Security Council had adopted the resolution imposing sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) to address the situation in Kosovo: see S/PV.3868 (31

case, the Council ultimately affirmed that the deterioration of the situation in Kosovo did in fact constitute a threat to peace and security in the region.¹⁴

6.1.2 Threats to the peace

The practice of the Security Council has not been entirely consistent in relation to making determinations of a threat to the peace, whether in terms of the phrases utilized to make determinations, or the amount of detail the determinations incorporate. Nevertheless, the Council has made a determination of a threat to the peace in relation to each of its sanctions régimes.¹⁵ Conceptually, the situations in which the Council has determined the existence of threats to the peace sufficient to require the application of sanctions can be divided into two broad categories¹⁶: threats that contain a clear international or transboundary dimension; and threats that have arisen in situations of internal crisis.¹⁷

March 1998): *Provisional verbatim record of the 3868th meeting of the Security Council*, 12 (contending that, "In adopting this resolution, the Security Council sends an unmistakable message: that by acting under Chapter VII of the Charter, the Council considers that the situation in Kosovo constitutes a threat to international peace and security in the Balkans region").

¹⁴ See: S/RES/1199 (23 September 1998), preambular paragraph 14 ("Affirming that the deterioration of the situation in Kosovo, Federal Republic of Yugoslavia, constitutes a threat to peace and security in the region"); S/RES/1203 (24 October 1998), preambular paragraph 15 ("Affirming that the unresolved situation in Kosovo constitutes a continuing threat to peace and security in the region"); S/RES/1244 (10 June 1999), preambular paragraph 12 ("Determining that the situation in the region continues to constitute a threat to international peace and security").

¹⁵ Even in the case of the Iraq sanctions régime, where sanctions were initially applied in response to a breach of the peace, after the Gulf War the Security Council recharacterised the basis for the continued application of sanctions, treating it as a threat to the peace. See notes 24-26 and accompanying text, below. In addition, as discussed in section A, above, although the Council imposed sanctions without a prior explicit determination of a threat to the peace on two occasions - in connection with its sanctions régimes against the Bosnian Serbs and the Federal Republic of Yugoslavia - in both instances it subsequently confirmed the existence of such a threat.

¹⁶ The Council's tendency to avoid explicit articulations of the key factor or factors constituting a threat to the peace makes it difficult to categorize the types of situations in which the Council has determined the existence of a threat to the peace. In general, the Council tends to outline in the preambular paragraphs of a resolution the various circumstances at play in a particular situation, before making a simple determination that that situation constitutes a "threat to peace and security". The categories used here were chosen after a consideration of the major

i. Threats with a clear international dimension

Within the broad category of threats with an international or transboundary dimension, the Security Council has determined the existence of a threat to the peace in four different types of situations: (a) where a State has a history of maintaining an aggressive foreign policy, combined with the potential to possess or to produce weapons of mass destruction; (b) where a State or non-State entity has engaged in or provided support for acts of international terrorism; (c) where two States have been engaged in international conflict; and (d) where States have undertaken acts of interference in the affairs of another State.

factor or factors discernable in the relevant decisions of the Security Council as the basis for each determination of a threat to the peace. They are not mutually exclusive, as illustrated by the treatment of some sanctions régimes in more than one category (for example South Africa, Rwanda and Sierra Leone each feature in two or more of the different categories outlined below).

For other attempts to categorize the Security Council's determinations of threats to the peace, analysing the Council's practice under Article 39 in general, rather than as specifically connected to the application of sanctions, see: Simma, Bruno (ed.), *The Charter of the United Nations: a Commentary* (2002: 2^d edition) Oxford UP, 722-6 (using the categories "internal conflicts", "violations of human rights and humanitarian law", "violations of democratic principles", "terrorism" and "arms control"); Österdahl, Inger, *Threat to the Peace: the interpretation by the Security Council of Article 39 of the UN Charter* (1998) Iustus Förlag, Uppsala, 85-6 (noting that the recent practice of the Security Council implied that the following categories gave rise to a threat to the peace: "civil wars", "serious human rights crimes", "lack of democracy" and "serious violations of international humanitarian law"); Chesterman, Simon, *Just War or Just Peace? Humanitarian intervention and international law* (2001) OUP, Oxford, 127-62 (using the categories "internal armed conflicts", "humanitarian crises" and "disruption to democracy"); Majlessi, Sherwin, 'Use of Economic Sanctions under International Law: A Contemporary Assessment' (2001) *Canadian YBIL* 253-331, 267-9 (using the categories "massive violations of human rights that may provoke countermeasures", "extreme violence within a State (Civil War)", "non-compliance with international obligations", "concerns about the future conduct of a State (measures with respect to armament)" and "massive flows of refugees"); and Fielding, Lois E., 'Taking a Closer Look at Threats to Peace: The Power of the Security Council to Address Humanitarian Crises' (1996) *3 University of Detroit Mercy LR* 551-68, 563-4 (using the categories "civil war").

¹⁷ The use of the term "internal crisis" does not, of course, preclude the possibility that the situation might in fact result in transboundary consequences (as in the case of massive flows of refugees fleeing conflict). Interestingly, given the traditional underpinnings of the U.N.'s collective security system, twelve of the nineteen U.N. sanctions régimes (a significant majority) have been established to address threats arising from internal crises, including the sanctions régimes against: Southern Rhodesia, South Africa, the former Yugoslavia, Somalia,

(a) *States with an aggressive history and the potential to possess or produce weapons of mass destruction: the cases of South Africa and Iraq*

In the case of South Africa, an important component of the Security Council's characterization of a threat to the peace was the combination of South Africa's aggressive foreign policy and its attempts to acquire the capacity to produce nuclear weapons.¹⁸ In November 1977 the Council expressed grave concern that South Africa was at the threshold of producing nuclear weapons,¹⁹ and strongly condemned the Government of South Africa for its acts of repression, its continuance of the system of *apartheid* and its attacks against neighbouring States.²⁰ It then noted that it was acting under Chapter VII of the Charter of the United Nations,²¹ determined that, having regard to the policies and acts of the South African Government, the acquisition by South Africa of arms and related *matériel* constituted a threat to international peace and security,²² and applied mandatory sanctions against South Africa.²³

Liberia, the Bosnian Serbs, Haiti, Angola (UNITA), Rwanda, Sierra Leone, the Federal Republic of Yugoslavia to address the situation in Kosovo, and the DRC.

¹⁸ As discussed below, in relation to the Council's characterization of threats to the peace in cases of internal crisis, the South African Government's policy of *apartheid* and the manner in which it denied the majority of its population of their right to self-determination were also important background factors leading to the Council's determination of the existence of a threat to the peace in the case of South Africa. Although some commentators have contended that the international threat posed by South Africa was the decisive factor in the Council's determination of a threat to the peace [see, e.g., Simma, *The Charter of the United Nations* (2nd edition), above note 16, 724 (suggesting that the Council's action in relation to the situation in South Africa reflected the country's aggressive stance towards its neighbors)], it is unclear that the Council would have made a determination of a threat to the peace in the absence of the South African Government's policy of *apartheid* and its repression of the black South African majority. Similarly, it is unlikely that the Council would have terminated the sanctions régime if the South African Government had renounced its aggressive external policies and made a commitment not to pursue any longer its quest to obtain nuclear weapons, without also abolishing the policy of *apartheid* and enabling the right of the majority of its population to self-determination.

¹⁹ S/RES/418 (4 November 1977), preambular paragraph 5.

²⁰ S/RES/418 (4 November 1977), preambular paragraph 6.

²¹ S/RES/418 (4 November 1977), preambular paragraph 10.

²² S/RES/418 (4 November 1977), operative paragraph 1. The Council reaffirmed its determination of this threat in resolution 421 (1977): S/RES/421 (9 December 1977), preambular paragraph 1. In

In the case of the sanctions against Iraq, as applied after the Gulf War, the Council referred to the threat posed to peace and security in the area by weapons of mass destruction, as well as to the need to establish a zone free of such weapons in the Middle East.²⁴ It then noted that it was acting under Chapter VII of the Charter,²⁵ before reaffirming the continued application of the sanctions.²⁶

(b) *International Terrorism: the cases of Libya, Sudan and the Taliban & Al Qaida*

In the case of Libya, in January 1992 the Security Council characterised acts of terrorism as a threat to international peace and security,²⁷ expressed deep concern that investigations into the Pan Am and UTA bombings had implicated officials of the Libyan government,²⁸ deplored the fact that the Libyan government had not yet cooperated with attempts to establish responsibility for the bombings,²⁹ and urged the Libyan government to cooperate with international investigations.³⁰ Four months later, after Libya had failed to

resolution 473 (1980) the Council also characterised apartheid as seriously disturbing international peace and security: S/RES/473 (13 June 1980), operative paragraph 3.

²³ S/RES/418 (4 November 1977), operative paragraph 2.

²⁴ S/RES/687 (3 April 1991), preambular paragraph 17. This reference to a threat to international peace and security raises the question of whether the cessation of Gulf War hostilities also signified the effective dissipation of the breach of international peace and security that the Council had identified in resolution 660 (1990). If so, then it was necessary for the Council to identify an alternative threat to or breach of international peace and security to which the continued application of sanctions would respond. It is also possible, however, that the Council's affirmation of the thirteen prior resolutions on the situation (S/RES/687 (3 April 1991), operative paragraph 1) was meant to signify that the breach of international peace and security was continuing. According to such a reading of the situation, the breach of international peace and security would not fully dissipate until Iraq complied with its obligations under resolution 687 (1991).

²⁵ S/RES/687 (3 April 1991), preambular paragraph 26.

²⁶ S/RES/687 (3 April 1991), operative paragraphs 20-24.

²⁷ S/RES/731 (21 January 1992), preambular paragraph 2. This characterisation was implicit in the statement of the Council affirming "the right of all States ... to protect their nationals from acts of international terrorism that constitute threats to international peace and security."

²⁸ S/RES/731 (21 January 1992), preambular paragraph 6.

²⁹ S/RES/731 (21 January 1992), operative paragraph 2.

³⁰ S/RES/731 (21 January 1992), operative paragraph 3.

respond to its requests, the Council stated that the suppression of acts of terrorism was “essential for the maintenance of international peace and security”,³¹ and determined that the Libyan Government’s failure to demonstrate by concrete steps its renunciation of terrorism and its failure to respond fully and effectively to the requests of resolution 731 (1992) constituted a threat to international peace and security.³² The Council then invoked Chapter VII of the Charter,³³ before applying sanctions.³⁴

In the case of the Sudan, in January 1996 the Council condemned the “terrorist assassination attempt” that had been made against President Mubarak, of Egypt, in Addis Ababa, Ethiopia, on 26 June 1995.³⁵ The Council then called upon the Government of Sudan to extradite to Ethiopia three assassination attempt suspects who were believed to be in Sudan, and to refrain from assisting, supporting or facilitating terrorist activities and from giving shelter or sanctuary to “terrorist elements”.³⁶ In March 1996, after the Secretary-General had reported that Sudan had failed to comply with the Council’s requests,³⁷ the Council reaffirmed that the suppression of acts of international terrorism, including those in which States were involved, was essential for the maintenance of international peace and security.³⁸ It then determined that the Government of Sudan’s non-compliance with its

³¹ S/RES/748 (31 March 1992), preambular paragraph 4.

³² S/RES/748 (31 March 1992), preambular paragraph 7.

³³ S/RES/748 (31 March 1992), preambular paragraph 10.

³⁴ The sanctions were outlined in: S/RES/748 (31 March 1992), operative paragraphs 3-6.

³⁵ S/RES/1044 (31 January 1996), operative paragraph 1. For a detailed account of the assassination attempt and of the Ethiopian Government’s efforts to achieve the extradition of the three suspects from Sudan, see: S/1996/10 (9 January 1996), annex III: *Submission by Ethiopia to the United Nations Security Council on the assassination attempt on President Hosni Mubarak on 26 June 1995 in Addis Ababa, Ethiopia*.

³⁶ S/RES/1044 (31 January 1996), operative paragraph 4.

³⁷ See: S/1996/179 (11 March 1996): *Report of the Secretary-General pursuant to Security Council resolution 1044 (1996)*, paragraph 31.

³⁸ S/RES/1054 (26 April 1996), preambular paragraph 9.

requests to extradite the three suspects to Ethiopia, and to refrain from assisting, supporting or facilitating terrorist activities as well as from giving shelter or sanctuary to terrorists, constituted a threat to international peace and security.³⁹ The Council then noted that it was acting under Chapter VII of the Charter,⁴⁰ before imposing sanctions against Sudan.⁴¹

In the case of the Taliban/Al Qaida sanctions régime, in October 1999 the Security Council strongly condemned the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and reaffirmed its conviction that the suppression of international terrorism was essential for the maintenance of international peace and security.⁴² The Council then determined that the failure of the Taliban to comply with a demand it had made in December 1998 to stop providing sanctuary and training for international terrorists and their organizations and to cooperate with efforts to bring indicted terrorists to justice, constituted a threat to international peace and security.⁴³ It then noted that it was acting under Chapter VII of the Charter, before proceeding to apply sanctions against the Taliban.⁴⁴ In subsequent decisions related to the Taliban and Al Qaida sanctions régime, there has been a subtle evolution in the Council's characterisation of the threat to the peace. While the Taliban régime retained power in Afghanistan, the Council again determined - on two occasions - that the failure of the Taliban to comply with the requirements of the sanctions

³⁹ S/RES/1054 (26 April 1996), preambular paragraph 10.

⁴⁰ S/RES/1054 (26 April 1996), preambular paragraph 11.

⁴¹ S/RES/1054 (26 April 1996), operative paragraphs 3, 4.

⁴² S/RES/1267 (15 October 1999), preambular paragraph 5.

⁴³ S/RES/1267 (15 October 1999), preambular paragraph 8. The Security Council had made that demand in resolution 1214 (1998): S/RES/1214 (8 December 1998), operative paragraph 13.

⁴⁴ S/RES/1267 (15 October 1999), preambular paragraph 10.

régime constituted a threat to international peace and security,⁴⁵ whilst also reaffirming that the suppression of international terrorism was essential for the maintenance of international peace and security.⁴⁶ Since January 2002, however, the Council has simply reaffirmed that acts of international terrorism constitute a threat to international peace and security.⁴⁷

(c) *International conflict: the case of Ethiopia and Eritrea*

In the case of Ethiopia and Eritrea, in late-January 1999 the Security Council expressed grave concern at the escalating arms build-up on both sides of the border between Eritrea and Ethiopia.⁴⁸ At the time, the Council also expressed its strong support for the mediation efforts that had been undertaken by the Organization of African Unity (OAU), and in particular for the Framework Agreement which had been approved by the OAU's Mechanism for Conflict Prevention, Management, and Resolution in December 1998.⁴⁹ Two weeks later, after conflict broke out between the two countries, the Council stressed that the situation constituted a threat to peace and security⁵⁰ and demanded an immediate halt to hostilities.⁵¹ On 12 May 2000, after a fresh outbreak of hostilities between Ethiopia and Eritrea, the Council stressed that the situation constituted a threat to peace and security,⁵² and demanded that both parties immediately cease all military actions and refrain

⁴⁵ S/RES/1333 (19 December 2000), preambular paragraph 14; S/RES/1363 (30 July 2001), preambular paragraph 2.

⁴⁶ S/PRST/2000/12: *Presidential statement dated 7 April 2000*; S/RES/1333 (19 December 2000), preambular paragraph 7.

⁴⁷ S/RES/1390 (16 January 2002), preambular paragraph 9; S/RES/1455 (17 January 2003), preambular paragraph 7.

⁴⁸ S/RES/1226 (29 January 1999), preambular paragraph 2.

⁴⁹ S/RES/1226 (29 January 1999), operative paragraph 1. For the text of the Framework Agreement, see: S/1998/1223 (28 December 1998), annex.

⁵⁰ S/RES/1227 (10 February 1999), preambular paragraph 4.

⁵¹ S/RES/1227 (10 February 1999), operative paragraph 2.

⁵² S/RES/1297 (12 May 2000), preambular paragraph 9.

from the further use of force.⁵³ Five days later, with hostilities continuing, the Council determined that the situation between Ethiopia and Eritrea constituted a threat to regional peace and security,⁵⁴ and, acting under Chapter VII,⁵⁵ it imposed sanctions against both Eritrea and Ethiopia.⁵⁶

It is unclear why the Security Council decided to make a determination of a threat to the peace in the case of Ethiopia and Eritrea, rather than to characterize the situation as a breach of the peace. The existence of hostilities between States would seem to give rise to the archetypal instance of a breach of the peace. The same might also be said for the case of the sanctions against the former Yugoslavia. Although the sanctions were applied before Yugoslavia had dissolved, thus explaining why a threat rather than a breach was initially determined by the Council, in the post-Yugoslavia environment, with most of the successor entities of Yugoslavia recognized as States by the United Nations, it would have been open to the Security Council to define the ongoing conflict as a breach of the peace. In decisions relating to the application of the arms embargo dating from after the dissolution of Yugoslavia, however, the Council reaffirmed on a number of occasions that the situation in the former Yugoslavia continued to constitute a threat to international peace and security.⁵⁷

(d) Interference: the cases of the Federal Republic of Yugoslavia (Serbia-Montenegro) and Liberia

In the case of the Federal Republic of Yugoslavia (Serbia-Montenegro), the Security Council expressed deep concern in May 1992 about the rapid and violent

⁵³ S/RES/1297 (12 May 2000), operative paragraph .

⁵⁴ S/RES/1298 (17 May 2000), preambular paragraph 13.

⁵⁵ S/RES/1298 (17 May 2000), preambular paragraph 14.

⁵⁶ S/RES/1298 (17 May 2000), operative paragraph 6.

deterioration of the situation in Bosnia and Herzegovina,⁵⁸ and made certain demands of all parties that were active in Bosnia and Herzegovina, including that all forms of interference from outside Bosnia and Herzegovina should cease immediately.⁵⁹ Two weeks later, the Council deplored the fact that its demands had not been complied with,⁶⁰ and determined that the situation in Bosnia and Herzegovina and other parts of the former Yugoslavia constituted a threat to international peace and security.⁶¹ The Council then invoked Chapter VII of the Charter,⁶² before imposing sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro).⁶³

In the case of the second Liberia sanctions régime, the precise characterisation of the threat to the peace evolved in response to developments on the ground. In March 2001, the Council determined that the active support provided by the Liberian Government for armed rebel groups in neighbouring countries, and in particular for the Revolutionary United Front (RUF) in Sierra Leone, constituted a threat to international peace and security.⁶⁴ It then noted that it was acting under Chapter VII of the Charter before imposing sanctions.⁶⁵

⁵⁷ See, e.g., S/RES/721 (27 November 1991), preambular paragraph 4; S/RES/743 (21 February 1992), preambular paragraph 5; S/RES/1021 (22 November 1995), preambular paragraph 5.

⁵⁸ S/RES/752 (15 May 1992), preambular paragraph 3.

⁵⁹ S/RES/752 (15 May 1992), operative paragraph 3. The full set of demands included that: all parties and others concerned in Bosnia and Herzegovina stop fighting immediately (S/RES/752 (15 May 1992), operative paragraph 1); all forms of interference from outside Bosnia and Herzegovina cease immediately (S/RES/752 (15 May 1992), operative paragraph 3); Bosnia and Herzegovina's neighbours take swift action to end all interference in and respect the territorial integrity of Bosnia and Herzegovina (S/RES/752 (15 May 1992), operative paragraph 3); the Yugoslav People's Army be disbanded and disarmed (S/RES/752 (15 May 1992), operative paragraph 4); and all irregular forces in Bosnia and Herzegovina also be disbanded and disarmed (S/RES/752 (15 May 1992), operative paragraph 5).

⁶⁰ S/RES/757 (30 May 1992), preambular paragraph 4.

⁶¹ S/RES/757 (30 May 1992), preambular paragraph 17.

⁶² S/RES/757 (30 May 1992), preambular paragraph 18.

⁶³ S/RES/757 (30 May 1992), operative paragraphs 3-8.

⁶⁴ S/RES/1343 (7 March 2001), preambular paragraph 8.

⁶⁵ S/RES/1343 (7 March 2001), preambular paragraph 9.

In May 2002, when the Council extended the sanctions, it determined that the active support provided by the Liberian Government for armed rebel groups in the region, including the RUF, constituted a threat to international peace and security.⁶⁶ In May 2003, when the Council again extended the initial sanctions and introduced additional timber and travel sanctions, it determined that the active support provided by the Liberian Government for armed rebel groups in the region, including to rebels in Côte d'Ivoire and former RUF combatants who continued to destabilize the region, constituted a threat to international peace and security.⁶⁷

In these situations, it is interesting that the Security Council opted to determine the existence of a threat to the peace rather than a breach of the peace or an act of aggression. In each of the cases, the action giving rise to the determination of a threat was clearly of an international character. Thus, it would have been open to the Council to determine either the existence of a breach of the peace or of an act of aggression. The fact that the Council opted to characterize those situations as threats to the peace thus suggests that in future the determination of breaches of the peace or of aggression will continue to be considerably rarer than determinations of threats to the peace.

ii. *Threats arising from internal crisis*

Within the broad category of threats arising from internal crisis, the Security Council has determined the existence of a threat to the peace in the four following types of situation:

a) Where a racist minority has prevented the majority from exercising its right to self-determination; b) Where a Government maintains a policy of *apartheid*; c) Where there is

⁶⁶ S/RES/1408 (6 May 2002), preambular paragraph 11.

⁶⁷ S/RES/1478 (6 May 2003), preambular paragraph 13.

general civil war, with no entity in effective control of the apparatus of Government;

d) Where power has been seized from a democratically-elected Government; e) Where a Government has been subject to or threatened by the use of military force by a rebel group;

f) Where there has been a serious humanitarian crisis; and g) Where a Government has used oppressive force against a minority, in violation of that minority's fundamental rights, including the right to self-determination.

(a) *The denial of the right to self-determination by a racist minority régime⁶⁸: the case of Southern Rhodesia*

In the case of Southern Rhodesia, the denial of the right to self-determination by the illegal white minority régime was the major factor prompting the Council to determine the existence of a threat to the peace.⁶⁹ In late-1965, the Council condemned the unilateral

⁶⁸ The term "racist régime" was used consistently by the Security Council in respect of the Southern Rhodesian and South African régimes. For some of the many examples of the use of this term in relation to the Southern Rhodesian régime, see: S/RES/326 (2 February 1973), operative paragraph 3; S/RES/386 (17 March 1976), operative paragraph 6; S/RES/423 (14 March 1978), operative paragraph 5; S/RES/424 (17 March 1978), preambular paragraph 8; S/RES/445 (8 March 1979), preambular paragraphs 7, 9, operative paragraphs 1, 6; S/RES/448 (30 April 1979), preambular paragraphs 4, 5, operative paragraph 2; S/RES/455 (23 November 1979), preambular paragraph 8, operative paragraph 4. For some of the many examples of the use of this term in relation to the South African régime, see: S/RES/326 (2 February 1973), operative paragraph 1; S/RES/473 (13 June 1980), preambular paragraph 4, operative paragraphs 1, 9; S/RES/546 (6 January 1984), preambular paragraph 3; S/RES/571 (20 September 1985), preambular paragraphs 4, 6, operative paragraph 1; S/RES/574 (7 October 1985), preambular paragraph 5, operative paragraph 1; S/RES/591 (28 November 1986), preambular paragraph 8.

⁶⁹ Although some commentators have contended that an equally important factor was the potential for the spread of armed conflict throughout Southern Africa [see, e.g., Simma, *The Charter of the United Nations* (2nd edition), above note 16, 724 (suggesting that the Council's action in relation to the situation in Southern Rhodesia was driven in part by concern for the danger of armed conflict in Southern Africa)], a close reading of the Security Council's decisions suggests that in the case of Southern Rhodesia, initially at least, the external policies of the illegal régime were not a significant consideration in the determination of a threat to the peace.

The Council did not refer to the aggressive external policies of the illegal régime in its initial resolutions applying and modifying the Southern Rhodesian sanctions régime. In fact, the Council did not refer to the aggressive foreign policies of the illegal Southern Rhodesian régime in its relevant resolutions until more than six years after the sanctions were first imposed. Once the Council did address the illegal régime's aggressive foreign policy, which it first did in relation to the régime's actions against Zambia [see S/RES/326 (2 February 1973)], it proceeded to adopt a number of resolutions addressing the régime's aggressive external

declaration of independence by Ian Smith's white minority,⁷⁰ and determined that the continuance of the illegal régime constituted a threat to international peace and security.⁷¹

More than twelve months later, with the Smith régime still in power, the Council noted that it

policies against various States in the region, including: Mozambique [see: S/RES/386 (17 March 1976); S/RES/411 (30 June 1977); S/RES/445 (8 March 1979)], Botswana [(S/RES/403 (14 January 1977); S/RES/411 (30 June 1977)], Zambia again [S/RES/411 (30 June 1977); S/RES/424 (17 March 1978); S/RES/445 (8 March 1979); S/RES/455 (23 November 1979)], and Angola (see: S/RES/445 (8 March 1979)). Nevertheless, although in several of those resolutions the Council portrayed the aggressive policies of the illegal régime as a significant factor in the overall threat to the peace [see, e.g., S/RES/411 (30 June 1977), preambular paragraph 8 ("Cognizant of the fact that the recent acts of aggression perpetrated by the illegal régime against the People's Republic of Mozambique together with that régime's constant acts of aggression and threats against the sovereignty and territorial integrity of the Republic of Botswana and the Republic of Zambia aggravate the existing serious threat to the security and stability of the region); S/RES/424 (17 March 1978), preambular paragraph 8 ("Reaffirming that the existence of the minority racist régime in Southern Rhodesia and the continuance of its acts of aggression against Zambia and other neighbouring States constitutes a threat to international peace and security"); S/RES/445 (8 March 1979), preambular paragraph 7 ("Reaffirming that the existence of the illegal racist minority régime in Southern Rhodesia and the continuance of its acts of aggression against neighbouring independent States constitutes a threat to international peace and security"); S/RES/455 (23 November 1979), preambular paragraph 8 ("Reaffirming that the existence of the minority racist régime in Southern Rhodesia and the continuance of its acts of aggression against Zambia and other neighbouring States constitute a threat to international peace and security")], the significance of those determinations should not be overemphasized as far as the Council's oversight of the Southern Rhodesian sanctions régime was concerned. First, the Council did not adopt any resolutions explicitly referring to or addressing the illegal Southern Rhodesian régime's aggressive foreign policies for more than six years after the sanctions régime was established. Second, even when the Council did adopt a resolution explicitly addressing the illegal régime's foreign policies, it did not yet characterize those policies as a threat to the peace. Rather, it reaffirmed its earlier determinations of a threat to international peace and security [see, e.g., S/RES/328 (10 March 1973), preambular paragraph 4]. In fact, the Council did not explicitly incorporate the illegal régime's aggressive foreign policies as part of a determination of a threat to the peace for more than eleven years after the sanctions régime was established. Third, the Council's determinations of a threat to the peace as being based in part on the aggressive foreign policies of the illegal régime featured not in resolutions that were integrally connected with the sanctions régime, but in resolutions that specifically addressed the consequences of the illegal régime's aggressive foreign policies. Fourth, even when the Security Council did incorporate the aggressive external policies of the illegal régime as part of a determination of a threat to international peace and security, the basis of the original determinations of a threat to the peace – the existence of the illegal racist minority régime in Southern Rhodesia – was mentioned prior to the reference to the régime's aggressive external policies. See, e.g.: S/RES/424 (17 March 1978), preambular paragraph 8; S/RES/445 (8 March 1979), preambular paragraph 7; S/RES/455 (23 November 1979), preambular paragraph 8 (each reaffirming that the existence of the minority racist régime in Southern Rhodesia and the continuance of its acts of aggression against neighbouring States constituted a threat to international peace and security).

⁷⁰ S/RES/216 (12 November 1965), operative paragraph 1; S/RES/217 (20 November 1965), operative paragraph 3.

⁷¹ S/RES/217 (20 November 1965), operative paragraph 1.

was acting in accordance with Articles 39 and 41 of the Charter,⁷² determined that the situation in Southern Rhodesia constituted a threat to international peace and security,⁷³ and applied sanctions.⁷⁴ At the same time, the Council also reaffirmed “the inalienable rights of the people of Southern Rhodesia to freedom and independence”.⁷⁵ In subsequent decisions modifying the scope of the sanctions régime, the Council reaffirmed the ongoing nature of the threat posed to international peace and security by the illegal minority régime in Southern Rhodesia⁷⁶ and invoked Chapter VII⁷⁷ and Article 41⁷⁸ of the Charter. On multiple occasions, the Council also reaffirmed the importance of the objectives of ending the rebellion in Southern Rhodesia⁷⁹ and enabling the self-determination and independence of the Southern Rhodesian people.⁸⁰

(b) *Apartheid: the case of South Africa*

⁷² S/RES/232 (16 December 1966), preambular paragraph 4.

⁷³ S/RES/232 (16 December 1966), operative paragraph 1.

⁷⁴ S/RES/232 (16 December 1966), operative paragraph 2.

⁷⁵ S/RES/232 (16 December 1966), operative paragraph 4.

⁷⁶ See, e.g., S/RES/253 (29 May 1968), preambular paragraph 9; S/RES/277 (18 March 1970), preambular paragraph 6; S/RES/328 (10 March 1973), preambular paragraph 4; S/RES/445 (8 March 1979), preambular paragraph 7; and S/RES/455 (23 November 1979), preambular paragraph 8.

⁷⁷ See, e.g., S/RES/253 (29 May 1968), preambular paragraph 10; S/RES/277 (18 March 1970), preambular paragraph 7; S/RES/388 (6 April 1976), preambular paragraph 5; S/RES/409 (27 May 1977), preambular paragraph 5.

⁷⁸ See S/RES/277 (18 March 1970), operative paragraph 9.

⁷⁹ See, e.g., S/RES/232 (16 December 1966), preambular paragraph 2; S/RES/253 (29 May 1968), preambular paragraph 3 and operative paragraph 3; S/RES/277 (18 March 1970), operative paragraph 9; S/RES/288 (17 November 1970), operative paragraph 2; S/RES/326 (2 February), operative paragraph 4; S/RES/423 (14 March 1978), in general.

⁸⁰ See, e.g., S/RES/232 (16 December 1966), operative paragraph 4; S/RES/253 (29 May 1968), preambular paragraphs 7, 8, operative paragraph 2; S/RES/277 (18 March 1970), preambular paragraph 5, operative paragraph 4; S/RES/288 (17 November 1970), preambular paragraph 4, operative paragraph 2; S/RES/318 (28 July 1972), operative paragraphs 1, 2; S/RES/326 (2 February), preambular paragraph 3; S/RES/328 (10 March 1973), preambular paragraph 7, operative paragraph 3; S/RES/386 (17 March 1976), preambular paragraph 4; S/RES/403 (14 January 1977), preambular paragraph 3; S/RES/424 (17 March 1978), preambular paragraph 4; S/RES/445 (8 March 1979), preambular paragraph 8; S/RES/448 (30 April 1979), preambular paragraph 7; S/RES/460 (21 December 1979), operative paragraph 1; S/RES/463 (2 February 1980), operative paragraph 1.

As noted above, an important component of the Security Council's determination of a threat to the peace in the case of South Africa was the combination of the South African Government's aggressive foreign policies and its pursuit of nuclear weapons. Another important factor leading to the characterization of a threat to the peace, however, was the South African Government's policy of *apartheid*, repression of the majority of its population, and denial of the right to self-determination. On 31 October 1977, five days before it imposed sanctions against South Africa, the Council recalled its earlier calls to the South African régime to end violence against its people and to take urgent steps to eliminate *apartheid* and racial discrimination,⁸¹ and noted that it was convinced that the violence and repression by the South African racist régime had greatly aggravated the situation in South Africa and would lead to violent conflict and racial conflagration with serious international repercussions.⁸² At the same time, the Council also reaffirmed the legitimacy of the struggle of the South African people for the elimination of *apartheid* and racial discrimination,⁸³ and affirmed the right to the exercise self-determination by all the people of South Africa, irrespective of race, colour or creed.⁸⁴ The Council then strongly condemned the South African régime for its repression of its black people and of other opponents of *apartheid*,⁸⁵ expressed support for and solidarity with those people struggling for the elimination of *apartheid*,⁸⁶ and made certain demands of the South African régime.⁸⁷

⁸¹ S/RES/417 (31 October 1977), preambular paragraph 1.

⁸² S/RES/417 (31 October 1977), preambular paragraph 4.

⁸³ S/RES/417 (31 October 1977), preambular paragraph 5.

⁸⁴ S/RES/417 (31 October 1977), preambular paragraph 6.

⁸⁵ S/RES/417 (31 October 1977), operative paragraph 1.

⁸⁶ S/RES/417 (31 October 1977), operative paragraph 2.

⁸⁷ S/RES/417 (31 October 1977), operative paragraph 3. Those demands included that the racist régime of South Africa: (a) End violence and repression against black people and opponents of *apartheid*; (b) Release all persons imprisoned under arbitrary security laws and all those

Five days later, when the Council imposed sanctions against South Africa, it again called upon the South African Government to end violence against its people and to take urgent steps to eliminate apartheid and racial discrimination.⁸⁸ While it recognized that the military build-up by South Africa and its persistent acts of aggression seriously disturbed the security of those States,⁸⁹ in addition to condemning the Government of South Africa for its attacks against neighbouring States, the Council also condemned it for its acts of repression and its continuance of the system of apartheid.⁹⁰ Thus, although the Council's determination of a threat to the peace focussed upon the danger posed by South Africa's acquisition of arms and related *matériel*,⁹¹ the Council was clearly concerned by the South African Government's internal policies, as well as its foreign policy. Moreover, in subsequent decisions addressing the situation in South Africa, the Council characterized the South African Government's policy of *apartheid* as "seriously disturbing international peace and security",⁹² and reaffirmed the importance of the objectives of eliminating *apartheid*,

detained for their opposition to *apartheid*; (c) Cease indiscriminate violence against peaceful demonstrators against *apartheid*, murders in detention and torture of political prisoners; (d) Abrogate bans on organizations and the news media opposed to *apartheid*; (e) Abolish the "Bantu education" system and all other measures of *apartheid* and racial discrimination; and (f) Abolish the policy of bantustanization, abandon the policy of *apartheid* and ensure majority rule based on justice and equality.

⁸⁸ S/RES/418 (4 November 1977), preambular paragraph 1.

⁸⁹ S/RES/418 (4 November 1977), preambular paragraph 2.

⁹⁰ S/RES/418 (4 November 1977), preambular paragraph 6.

⁹¹ S/RES/418 (4 November 1977), operative paragraph 1 (determining that, having regard to the policies and acts of the South African Government, the acquisition by South Africa of arms and related *matériel* constituted a threat to international peace and security). The Council reaffirmed its determination of this threat in resolution 421 (1977): S/RES/421 (9 December 1977), preambular paragraph 1. In resolution 473 (1980) the Council also characterised apartheid as seriously disturbing international peace and security: S/RES/473 (13 June 1980), operative paragraph 3.

⁹² S/RES/473 (13 June 1980), operative paragraph 3.

establishing a democratic society, and ensuring the enjoyment of equal rights by all South Africans.⁹³

(c) *General civil war: the cases of the former Yugoslavia, Somalia, Liberia and Rwanda*

The Security Council has applied sanctions to address situations of general civil war, where no single entity is effectively exercising the powers of government, in the cases of the former Yugoslavia, Somalia, Liberia and Rwanda.

In the case of the former Yugoslavia, in September 1991 the Council stated that it was deeply concerned by the fighting in Yugoslavia, which was “causing a heavy loss of human life and material damage,” and by “the consequences for the countries of the region”.⁹⁴ The Council then expressed concern that the continuation of the situation in Yugoslavia constituted a threat to international peace and security,⁹⁵ and invoked Chapter

⁹³ For statements regarding the importance to international peace and security of eliminating apartheid, see: S/RES/418 (4 November 1977), preambular paragraph 1; S/RES/424 (17 March 1978), preambular paragraph 7 (stating that the Council was “conscious that the liberation of Zimbabwe and Namibia and the elimination of apartheid in South Africa were necessary for the attainment of justice and lasting peace in the region and in the furtherance of international peace and security”); S/RES/473 (13 June 1980), preambular paragraph 7, operative paragraph 4, 7; S/RES/569 (26 July 1985), operative paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7; S/RES/765 (16 July 1992), operative paragraph 7.

For statements regarding the importance of establishing a democratic society in South Africa, see: See, e.g., S/RES/473 (13 June 1980), preambular paragraph 7, operative paragraph 4; S/RES/569 (26 July 1985), preambular paragraph 5, operative paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7.

For statements regarding the importance of the enjoyment of equal rights by all South Africans, see: S/RES/473 (13 June 1980), preambular paragraph 7, operative paragraphs 4 and 7; S/RES/569 (26 July 1985), preambular paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7.

⁹⁴ S/RES/713 (25 September 1991), preambular paragraph 3.

⁹⁵ S/RES/713 (25 September 1991), preambular paragraph 4.

VII of the Charter before imposing an embargo upon the delivery of weapons and military equipment to Yugoslavia.⁹⁶

In the case of Somalia, in January 1992 the Security Council expressed alarm at the rapid deterioration of the situation in Somalia, as well as at the heavy loss of human life and widespread material damage resulting from conflict, and expressed its awareness of the potential consequences of the conflict for stability and peace in the region.⁹⁷ The Council then expressed concern that the continuation of the situation constituted a threat to international peace and security,⁹⁸ and invoked Chapter VII of the Charter before imposing an arms embargo against Somalia.⁹⁹

In the case of the first Liberia sanctions régime, in November 1992 the Security Council reaffirmed its belief that a particular peace agreement offered the best framework

⁹⁶ The invocation of Chapter VII appeared in the same operative paragraph by which the Council imposed the embargo: see S/RES/713 (25 September 1991), operative paragraph 6. When the embargo was first imposed, the international community had not yet acknowledged the break-up of the Socialist Federal Republic of Yugoslavia (SFRY). In resolution 713 (1991), the Council therefore applied the arms embargo against the Socialist Federal Republic of Yugoslavia in general. It was not until resolution 752 (1992) that Council resolutions began to refer to "the former Socialist Federal Republic of Yugoslavia": see, e.g.: S/RES/752 (15 May 1992), preambular paragraph 3, operative paragraph 6; S/RES/757 (30 May 1992), preambular paragraphs 2, 10, 17. Upon the break-up of Yugoslavia the embargo remained in place, subsequently applying to all the States of the former Yugoslavia: see S/RES/727 (8 January 1992), operative paragraph 6 (reaffirming that the embargo applied to all the States of the former Yugoslavia, in accordance with the interpretation provided by the Secretary-General in his further report pursuant to Security Council resolution 721 (1991). For the relevant part of that report, see: S/23363 and Add. 1 (5 and 7 January 1992), paragraph 33).

The Council's decision to apply sanctions against the SFRY might be interpreted as a movement away from the traditional approach to the operation of Chapter VII, likely held by the framers of the Charter, which viewed conventional State versus State conflict as the type of breach of or threat to peace and security that would require the application of Article 41 or Article 42 measures. Although the Council identified the potential threat posed to other States in the region by the conflict in the SFRY (see note 95, above), the application of sanctions against the SFRY implicitly acknowledged that conflicts traditionally viewed as "internal" and therefore beyond the scope of Chapter VII intervention could in fact pose a threat to international peace and security.

⁹⁷ S/RES/733 (23 January 1992), preambular paragraph 3.

⁹⁸ S/RES/733 (23 January 1992), preambular paragraph 4.

⁹⁹ The invocation of Chapter VII appeared in the same operative paragraph by which the Council imposed the embargo: see S/RES/733 (23 January 1992), operative paragraph 5.

for a peaceful resolution of the Liberian conflict.¹⁰⁰ The Council then expressed regret that the parties to the conflict had not respected or implemented that agreement,¹⁰¹ determined that the deterioration of the situation in Liberia constituted a threat to international peace and security,¹⁰² and invoked Chapter VII of the U.N. Charter before imposing sanctions against Liberia.¹⁰³

In the case of Rwanda, in May 1994 the Security Council strongly condemned the ongoing violence in Rwanda,¹⁰⁴ and expressed its deep concern that the consequences of the violence in Rwanda, including the internal displacement of a significant percentage of the Rwandan population and the massive exodus of refugees, constituted a humanitarian crisis of “enormous proportions”.¹⁰⁵ Noting that it was deeply disturbed by the magnitude of the human suffering caused by the conflict,¹⁰⁶ the Council determined that the situation in Rwanda constituted a threat to peace and security in the region,¹⁰⁷ and invoked Chapter VII of the Charter,¹⁰⁸ before imposing sanctions against Rwanda.¹⁰⁹

(d) *Seizure of power from a democratically-elected Government: the cases of Haiti and Sierra Leone*

In the case of the sanctions against Haiti, in June 1993 the Security Council received a letter from the representative of Haiti to the United Nations, requesting that it make

¹⁰⁰ S/RES/788 (19 November 1992), preambular paragraph 2. The Yamoussoukro IV Agreement, of 30 October 1991, had endeavoured to create the conditions necessary for the holding of free and fair elections. For details, see: S/24815 (17 November 1992), annex.

¹⁰¹ S/RES/788 (19 November 1992), preambular paragraph 4.

¹⁰² S/RES/788 (19 November 1992), preambular paragraph 5.

¹⁰³ S/RES/788 (19 November 1992), operative paragraph 8.

¹⁰⁴ S/RES/918 (17 May 1994), preambular paragraph 5.

¹⁰⁵ S/RES/918 (17 May 1994), preambular paragraph 8.

¹⁰⁶ S/RES/918 (17 May 1994), preambular paragraph 18.

¹⁰⁷ S/RES/918 (17 May 1994), section B, preambular paragraph 1.

¹⁰⁸ S/RES/918 (17 May 1994), section B, preambular paragraph 2.

universal and mandatory the trade embargo against Haiti which had been recommended by the Organization of American States (OAS).¹¹⁰ In response, the Council expressed its strong support for the efforts made by the U.N. Secretary-General, the OAS Secretary-General and the international community to reach a political solution to the crisis in Haiti,¹¹¹ noted with concern the incidence of humanitarian crises, including mass displacements of population, becoming or aggravating threats to international peace and security,¹¹² and stated that it deplored the fact that the legitimate Government of Jean-Bertrand Aristide had not been reinstated.¹¹³ The Council then considered that the request from the representative of Haiti warranted “exceptional” measures by the Council in support of the efforts that had already been take to resolve the situation within the OAS framework,¹¹⁴ and it determined that, in those “unique and exceptional circumstances”, the continuation of the situation in Haiti threatened international peace and security in the region.¹¹⁵ The Council then noted that it was acting under Chapter VII of the Charter,¹¹⁶ and imposed sanctions against the *de facto* authorities in Haiti.¹¹⁷

In the case of Sierra Leone, in October 1997 the Security Council recalled its earlier statements condemning the military coup that had taken place in Sierra Leone on 25 May

¹⁰⁹ S/RES/918 (17 May 1994), operative paragraph 13.

¹¹⁰ S/25958 (16 June 1993): *Letter dated 7 June 1993 from the Representative of Haiti addressed to the President of the Security Council*.

¹¹¹ S/RES/841 (16 June 1993), preambular paragraph 6.

¹¹² S/RES/841 (16 June 1993), preambular paragraph 9.

¹¹³ S/RES/841 (16 June 1993), preambular paragraph 10.

¹¹⁴ S/RES/841 (16 June 1993), preambular paragraph 13.

¹¹⁵ S/RES/841 (16 June 1993), preambular paragraph 14.

¹¹⁶ S/RES/841 (16 June 1993), preambular paragraph 15.

¹¹⁷ S/RES/841 (16 June 1993), operative paragraphs 5, 6 and 8.

1996,¹¹⁸ and deplored the fact that the military junta had not taken steps to allow the restoration of the democratically-elected Government and a return to constitutional order.¹¹⁹ The Council then expressed its grave concern at the continued violence and loss of life in Sierra Leone following the military coup, at the deteriorating humanitarian conditions in that country, and at the consequences for neighbouring countries.¹²⁰ The Council then determined that the situation in Sierra Leone constituted a threat to international peace and security in the region,¹²¹ and invoked Chapter VII of the Charter before imposing sanctions.¹²²

(e) *The use or threat of military force by rebel groups against a Government: the cases of the Bosnian Serbs, Angola (UNITA), Sierra Leone and the DRC*

The Security Council has determined the existence of a threat to the peace in several situations where armed rebel groups have used or threatened to use military force against a Government, including in the cases of the Bosnian Serbs, UNITA, Sierra Leone and the DRC. The objectives of sanctions applied to address such a threat have generally been to induce the rebel group to engage in a peace process, including through the disarmament, demobilization and reintegration of rebel troops into civilian population.

¹¹⁸ S/RES/1132 (8 October 1997), preambular paragraph 1. Those statements had taken the form of three presidential statements: S/PRST/29 (27 May 1996): *Presidential statement of 27 May 1996*; S/PRST/36 (11 July 1996): *Presidential statement of 11 July 1996*; and S/PRST/42 (6 August 1997): *Presidential statement of 6 August 1997*.

¹¹⁹ S/RES/1132 (8 October 1997), preambular paragraph 7.

¹²⁰ S/RES/1132 (8 October 1997), preambular paragraph 8.

¹²¹ S/RES/1132 (8 October 1997), preambular paragraph 9.

¹²² S/RES/1132 (8 October 1997), preambular paragraph 10. The major objective of the Sierra Leone sanctions régime was achieved on 10 March 1998, with the return to power of the democratically-elected Government. The initial sanctions were subsequently terminated, but were replaced immediately by new sanctions. The basis of the threat to the peace for the application of the subsequent sanctions therefore shifted to the threat posed to a legitimate Government by a rebel group. For further details, see the discussion below in the section addressing the Council's determinations of threats to the peace in situations where internal crises are caused by the use or threat of military force against a Government by rebel groups.

In the case of the sanctions against the Bosnian Serbs, on 17 April 1993 the Security Council expressed grave concern at the refusal of the Bosnian Serb party to participate in the Bosnian peace plan,¹²³ expressed determination to strengthen the implementation of its earlier relevant resolutions,¹²⁴ and noted that it was acting under Chapter VII,¹²⁵ before imposing sanctions against the Bosnian Serbs.¹²⁶ As noted above, the Council did not make an explicit determination of a threat to or breach of international peace and security before imposing the sanctions against the Bosnian Serbs.¹²⁷ It did make such a determination in September 1994, however, when it strengthened the sanctions against the Bosnian Serbs. At that time, the Council reaffirmed the need for a lasting peace settlement to be signed and implemented in good faith by all the Bosnian parties,¹²⁸ and noted that it viewed the measures it was about to impose as a means towards the end of producing a negotiated settlement to the conflict.¹²⁹ The Council then determined that the situation in the former Yugoslavia continued to constitute a threat to international peace and security¹³⁰ and invoked Chapter VII of the Charter,¹³¹ before strengthening the sanctions.

In the case of the sanctions against UNITA, in September 1993 the Security Council expressed grave concern at the continuing deterioration of the political and military

¹²³ S/RES/820 (17 April 1993), operative paragraph 3.

¹²⁴ S/RES/820 (17 April 1993), Section B, preambular paragraph 1.

¹²⁵ S/RES/820 (17 April 1993), Section B, preambular paragraph 2.

¹²⁶ S/RES/820 (17 April 1993), operative paragraph 12.

¹²⁷ For further discussion of the reasons why the Security Council might not have made such a determination and analysis of the potential consequences of a failure to make such a determination, see notes 7-9 and accompanying text, above.

¹²⁸ S/RES/942 (23 September 1994), preambular paragraph 4.

¹²⁹ S/RES/942 (23 September 1994), preambular paragraph 5.

¹³⁰ S/RES/942 (23 September 1994), preambular paragraph 7.

¹³¹ S/RES/942 (23 September 1994), preambular paragraph 8; S/RES/1022 (22 November 1995), preambular paragraph 11; S/RES/1074 (1 October 1996), preambular paragraph 9.

situation in Angola,¹³² and strongly condemned UNITA for not having taken the necessary steps to comply with its previous demands to respect the results of the election that had been held in September 1992 and to cease its military actions immediately.¹³³ The Council then determined that, as a result of UNITA's military actions, the situation in Angola constituted a threat to international peace and security,¹³⁴ and it noted that it was acting under Chapter VII of the Charter,¹³⁵ before imposing sanctions against UNITA.

In the case of Sierra Leone, upon the return to power of the Sierra Leone Government the basis of the threat to the peace shifted subtly from the seizure of power from a democratically-elected Government to the use or threat of military force by a rebel group against a legitimate Government.¹³⁶ Although the Council has not explicitly acknowledged this shift in its resolutions,¹³⁷ the change can nevertheless be inferred from

¹³² S/RES/864 (15 September 1993), preambular paragraph 3.

¹³³ S/RES/864 (15 September 1993), section B, preambular paragraph 1. Those demands included that UNITA respect the results of the election that had been held on 29 and 30 September 1992 and that it cease its military actions. See, e.g.: S/RES/804 (29 January 1993), operative paragraph 3 (demanding that the parties cease fire immediately and restore a meaningful dialogue on a clear timetable for the implementation of the Accords); S/RES/811 (12 March 1993), operative paragraph 2 (demanding that UNITA accept unreservedly the results of the elections and abide fully by the Acordos de Paz), operative paragraph 3 (strongly demanding an immediate cease-fire throughout the country and the resumption of dialogue); S/RES/834 (1 June 1993), operative paragraph 3 (reiterating the demand that UNITA accept unreservedly the results of the election); S/RES/851, operative paragraph 4 (reiterating the demand that UNITA accept the results of the election), operative paragraph 5 (condemning UNITA for its continuing military actions and demanding that they cease).

¹³⁴ S/RES/864 (15 September 1993), section B, preambular paragraph 4.

¹³⁵ S/RES/864 (15 September 1993), section B, preambular paragraph 5.

¹³⁶ The Government was returned to power on 10 March 1998. The Security Council welcomed that development in resolution 1156 (1998): S/RES/1156 (16 March 1998), operative paragraph 1. For the resolutions modifying the Sierra Leone sanctions régime after the Government regained power, see: S/RES/1156 (16 March 1998); S/RES/1171 (5 June 1998); S/RES/1299 (19 May 2000); S/RES/1306 (5 July 2000); S/RES/1385 (19 December 2001); S/RES/1446 (4 December 2002).

¹³⁷ In its first resolution maintaining the sanctions régime after the Government's return to power, the Council invoked Chapter VII of the Charter, but did not make an explicit determination of a threat to the peace. See: S/RES/1171 (5 June 1998), preambular paragraph 4. In subsequent resolutions modifying the sanctions régime, the Council did determine explicitly that the situation in Sierra Leone continued to constitute a threat to international peace and security in the region,¹³⁷ but without articulating clearly the basis for such a determination. See, e.g.,

multiple statements by the Council that the objective of the sanctions régime subsequent to the restoration to power of the Sierra Leone Government was the re-establishment throughout Sierra Leone of Government control, as well as the disarmament, demobilization and reintegration of rebel forces, including led by the former military junta and the Revolutionary United Front (RUF).¹³⁸

In the case of the DRC, in July 2003 the Security Council welcomed the conclusion of the Global and All Inclusive Agreement on the Transition in the DRC,¹³⁹ whilst expressing deep concern at the continuation of hostilities in the eastern part of the DRC, particularly in North and South Kivu and Ituri, and by the grave violations of human rights and international humanitarian law that accompanied those hostilities.¹⁴⁰ The Council then noted that the situation in the DRC continued to constitute a threat to international peace and security in the region,¹⁴¹ and stated that it was acting under Chapter VII of the Charter,¹⁴² before imposing the sanctions.¹⁴³

(f) Serious humanitarian crises

In a number of the situations already treated above, the Security Council has identified a serious humanitarian crisis as part of the background circumstances at play in a

S/RES/1306 (5 July 2000), preambular paragraph 4; S/RES/1385 (19 December 2001), preambular paragraph 9; S/RES/1446 (4 December 2002), preambular paragraph 9.

¹³⁸ See, e.g., S/RES/1171 (5 June 1998), operative paragraph 7; S/RES/1306 (5 July 2000), operative paragraph 6; S/RES/1385 (19 December 2001), operative paragraph 3; S/RES/1446 (4 December 2002), operative paragraph 2.

¹³⁹ S/RES/1493 (28 July 2003), preambular paragraph 5.

¹⁴⁰ S/RES/1493 (28 July 2003), preambular paragraph 6.

¹⁴¹ S/RES/1493 (28 July 2003), preambular paragraph 11. The Council had originally made a determination of a threat to the peace an early resolution relating to the mandate of the United Nations Organization Mission in the DRC (MONUC). See: S/RES/1291, preambular paragraph 20 (determining that the situation in the DRC constituted a threat to international peace and security in the region).

¹⁴² S/RES/1493 (28 July 2003), preambular paragraph 12.

situation that ultimately led to a determination of a threat to the peace. This was especially evident in relation to the cases of Haiti and Rwanda.

In the case of Haiti, the Council noted with concern the incidence of humanitarian crises, including mass displacements of population, becoming or aggravating threats to international peace and security.¹⁴⁴ Although the seizure of power from the democratically-elected Government of President Aristide was an important factor contributing to the Council's determination of a threat to the peace, there can be little doubt that the humanitarian crisis at play formed another important factor leading the Council to determine that, in those "unique and exceptional circumstances", the continuation of the situation in Haiti threatened international peace and security in the region.¹⁴⁵

In the case of Rwanda, the Council expressed its deep concern that the consequences of the violence in Rwanda, including the internal displacement of a significant percentage of the Rwandan population and the massive exodus of refugees, constituted a humanitarian crisis of "enormous proportions".¹⁴⁶ Then, noting that it was deeply disturbed by the magnitude of the human suffering caused by the conflict,¹⁴⁷ the Council determined that the situation in Rwanda constituted a threat to peace and security in the region,¹⁴⁸ and invoked Chapter VII of the Charter,¹⁴⁹ before imposing sanctions against Rwanda.¹⁵⁰

¹⁴³ S/RES/1493 (28 July 2003), operative paragraph 20.

¹⁴⁴ S/RES/841 (16 June 1993), preambular paragraph 9.

¹⁴⁵ S/RES/841 (16 June 1993), preambular paragraph 14.

¹⁴⁶ S/RES/918 (17 May 1994), preambular paragraph 8.

¹⁴⁷ S/RES/918 (17 May 1994), preambular paragraph 18.

¹⁴⁸ S/RES/918 (17 May 1994), section B, preambular paragraph 1.

¹⁴⁹ S/RES/918 (17 May 1994), section B, preambular paragraph 2.

¹⁵⁰ S/RES/918 (17 May 1994), operative paragraph 13.

(g) *The violation by a Government of a minority's fundamental rights (including the right to self-determination): the case of Kosovo*

In the case of the sanctions imposed against the Federal Republic of Yugoslavia to address the situation in Kosovo, as noted above the Council did not make an initial determination of a threat to the peace before invoking Chapter VII of the Charter and imposing sanctions.¹⁵¹ Nevertheless, in the resolution imposing sanctions against the Federal Republic of Yugoslavia the Council pointed to certain background factors that might be considered to have prompted the Council to apply sanctions. Thus, the Council condemned the excessive use of force by Serbian police forces against civilian and peaceful demonstrators in Kosovo, as well as acts of terrorism in Kosovo, including by the Kosovo Liberation Army.¹⁵² It also called upon the Federal Republic of Yugoslavia to take the necessary steps to achieve a political solution to the issue of Kosovo through dialogue,¹⁵³ called upon the authorities in Belgrade and the leadership of the Kosovo Albanian community to enter into dialogue on political status issues,¹⁵⁴ and agreed that the principles for a solution to the Kosovo problem should be based on the territorial integrity of the Federal Republic of Yugoslavia and should take into account the rights of the Kosovo Albanians and all who lived in Kosovo, as well as expressing support for an enhanced status for Kosovo, including a greater degree of autonomy and self-administration.¹⁵⁵

¹⁵¹ The Council invoked Chapter VII in preambular paragraph 8, and imposed sanctions in operative paragraph 8, of: S/RES/1160 (31 March 1998). For discussion of the potential legal consequences flowing from the fact that the Council did not make a determination of a threat to the peace, see notes 10-14 and accompanying text, above.

¹⁵² S/RES/1160 (31 March 1998), preambular paragraph 3.

¹⁵³ S/RES/1160 (31 March 1998), operative paragraph 1.

¹⁵⁴ S/RES/1160 (31 March 1998), operative paragraph 4.

¹⁵⁵ S/RES/1160 (31 March 1998), operative paragraph 5.

In subsequent decisions related to the Kosovo sanctions régime, which were not directly concerned with the sanctions régime, but which nevertheless recalled the obligation of States to implement the sanctions or provided exemptions from the sanctions for actors who were mandated by the U.N. to operate in Kosovo as part of the U.N.'s efforts to address the situation in Kosovo,¹⁵⁶ the Council ultimately affirmed that the deterioration of the situation in Kosovo constituted a threat to peace and security in the region.¹⁵⁷ The Council also expressed grave concern at the indiscriminate use of force by Serbian security forces and the Yugoslav army, resulting in numerous civilian casualties, the displacement of hundreds of thousands of people, and a substantial flow of refugees,¹⁵⁸ expressed deep concern at reports of increasing violations of human rights and international humanitarian law,¹⁵⁹ and reaffirmed its support for a peaceful resolution of the Kosovo problem, including an enhanced status for Kosovo, a greater degree of autonomy, and self-administration.¹⁶⁰

¹⁵⁶ See, e.g., S/RES/1199 (23 September 1998), operative paragraph 7 (recalling the obligations of all States to implement the sanctions); S/RES/1203 (24 October 1998), operative paragraph 15 (deciding that the sanctions would not apply to equipment for the use of the Verification missions established by agreement between the Federal Republic of Yugoslavia and the OSCE and the Federal Republic of Yugoslavia and NATO); S/RES/1244 (10 June 1999), operative paragraph 16 (deciding sanctions would not apply to arms and related matériel for the use of the international civil and security presences it had established).

¹⁵⁷ See: S/RES/1199 (23 September 1998), preambular paragraph 14 ("Affirming that the deterioration of the situation in Kosovo, Federal Republic of Yugoslavia, constitutes a threat to peace and security in the region"); S/RES/1203 (24 October 1998), preambular paragraph 15 ("Affirming that the unresolved situation in Kosovo constitutes a continuing threat to peace and security in the region"); S/RES/1244 (10 June 1999), preambular paragraph 12 ("Determining that the situation in the region continues to constitute a threat to international peace and security").

¹⁵⁸ S/RES/1199 (23 September 1998), preambular paragraphs 6, 7.

¹⁵⁹ S/RES/1199 (23 September 1998), preambular paragraph 11.

¹⁶⁰ S/RES/1199 (23 September 1998), preambular paragraph 12; S/RES/1203 (24 October 1998), preambular paragraph 8.

6.1.3 Breaches of the peace

The Security Council has made one finding so far of a breach of the peace requiring the application of sanctions – in the case of Iraq’s invasion of Kuwait in August 1990. When Iraq invaded Kuwait on 2 August, the Council immediately adopted resolution 660 (1990), in which it determined the existence of a breach of the peace,¹⁶¹ and demanded that Iraq withdraw unconditionally from Kuwait.¹⁶² Four days later, when Iraq had not withdrawn from Kuwait, the Council noted that it was acting under Chapter VII of the Charter,¹⁶³ determined that Iraq had failed to comply with the demands outlined in resolution 660 (1990),¹⁶⁴ and imposed sanctions.¹⁶⁵ As noted above, after the Gulf War the basis for the continued application of the sanctions shifted from being a breach of the peace to a threat to the peace.¹⁶⁶

6.1.4 Acts of aggression

Although Article 39 of the Charter empowers the Security Council to take action to address “acts of aggression”, it does not provide any guidance as to the meaning of what has been described as a “very problematical concept”.¹⁶⁷ When the Charter was being drafted, the question of whether to include a definition of “acts of aggression” was fiercely

¹⁶¹ S/RES/660 (2 August 1990), preambular paragraph 2.

¹⁶² S/RES/660 (2 August 1990), operative paragraph 1.

¹⁶³ S/RES/661 (6 August 1990), preambular paragraph 7.

¹⁶⁴ S/RES/661 (6 August 1990), operative paragraph 1

¹⁶⁵ S/RES/661 (6 August 1990), operative paragraphs 2-4.

¹⁶⁶ For details, see notes 24-26 and accompanying text, above.

¹⁶⁷ Kelsen, Hans, *The Law of the United Nations: a Critical Analysis of its Fundamental Problems* (1951) Steven & Sons, London, 727 (“[T]he Charter does not define the very problematical concept ‘act of aggression’”).

debated.¹⁶⁸ Ultimately, the founders decided that it would be prudent to provide the Council with the flexibility to determine for itself when an act of aggression had taken place. The main rationales for this decision were that a defined list of acts of aggression, even if it were inclusive rather than exclusive, might impair the Council's ability to respond to unforeseen forms of aggression, and that such a list might lead the Council to treat as less important acts not included in the list.¹⁶⁹ As the San Francisco Conference left the phrase "acts of aggression" undefined, there was considerable conjecture in subsequent years regarding what acts might be said to amount to aggression.¹⁷⁰ That conjecture has dissipated somewhat with the contributions made to the endeavour of defining aggression by the U.N.

¹⁶⁸ For accounts of the discussions concerning aggression at the Dumbarton and San Francisco Conferences, see: Rifaat, Ahmed M., *International Aggression* (1979) Almquist & Wiksell, Uppsala, 105-16 (tracing the treatment of the question of aggression at Dumbarton and San Francisco); Hilderbrand, Robert C., *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security* (1990) UNC Press, Chapel Hill, NC, 137-8 (noting that at the Dumbarton Oaks conferences the British and American delegates were initially opposed to the idea of including aggression in Article 39, but that such a reference was included at the insistence of the Soviet delegates); *Documents of the United Nations Conference on International Organization* (1945) United Nations Information Organizations, New York, Vol. XI: Commission III: Security Council, 7 (containing the comments from the San Francisco Conference of the Rapporteur of Committee 3 of Commission III (on the Security Council), which had been charged, *inter alia*, with redrafting the provisions of what was to become Article 39).

¹⁶⁹ See, e.g., Hilderbrand, *Dumbarton Oaks*, *ibid*, 138 (observing that at Dumbarton Oaks the decision was made not to provide a specific definition of "aggression", in order to avoid limiting the breadth of the Council's powers, particularly in the face of the advancing technology of warfare); Comments of the Rapporteur of Committee 3 of Commission III on the Security Council, *ibid* (commenting on a proposition to define acts of aggression and observing: "Although this proposition evoked considerable support, it nevertheless became clear to a majority of the Committee that a preliminary definition of aggression went beyond the possibilities of this Conference and the purpose of the Charter. The progress of the technique of modern warfare renders very difficult the definition of all cases of aggression. It may be noted that, the list of such cases being necessarily incomplete, the Council would have a tendency to consider of less importance the acts not mentioned therein; these omissions would encourage the aggressor to distort the definition or might delay action by the Council. Furthermore, in the other cases listed, automatic action by the Council might bring about a premature application of enforcement measures").

¹⁷⁰ See, e.g., Brownlie, Ian, *International Law and the Use of Force by States* (1963) OUP, Oxford, UK, 351-8 (discussing, in 1963, potential forms of aggression, drawing upon the relevant approaches by different commentators at the time). See also Rifaat's extensive "select bibliography": Rifaat, *International Aggression*, above note 168, 327-34 (Appendix IV).

General Assembly's Resolution on the Definition of Aggression¹⁷¹ and the International Court of Justice's decision in the *Nicaragua Case*.¹⁷² Nevertheless, while those contributions provide the Security Council with useful guidance in determining whether acts of aggression have taken place, they do not restrict the Council's discretion to reach its own conclusions.¹⁷³

In light of the founders' reasons for not defining acts of aggression, it is interesting that the Council has not made greater use of its flexibility to identify acts of aggression as the basis for the application of sanctions. In fact, the Council has only once referred to acts of aggression in a resolution applying sanctions, doing so in the case of the South Africa

¹⁷¹ A/RES/3314 (XXIX) (14 January 1975), operative paragraph 1 (approving the Definition of Aggression, which is attached as an Annex), Annex: *Definition of Aggression* (containing the Definition of Aggression). For discussion of the process leading up to the adoption of the Definition of aggression, charting the deliberations of the First through Fourth Special Committees on the Question of Defining Aggression, see: Rifaat, *ibid*, 222-64.

¹⁷² *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)* (1986) *I.C.J. Rep.* 14-546, 103, paragraph 195 (stating that the definition of aggression contained in Article 3(g) of the General Assembly's Definition of Aggression might be taken to reflect customary international law, and proceeding to observe: "The Court sees no reason to deny that, in customary law, the prohibition of armed attacks may apply to the sending by a State of armed bands to the territory of another State").

¹⁷³ The Resolution on the Definition of Aggression makes this point crystal clear. See, e.g., A/RES/3314 (XXIX) (14 January 1975), operative paragraph 4 (calling the Security Council's attention to the Definition of Aggression and recommending that it should "as appropriate" take the Definition into account as "guidance" in determining "in accordance with the Charter" the existence of an act of aggression), Annex: *Definition of Aggression*, preambular paragraph 4 ("Bearing in mind that nothing in this Definition shall be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations"), Article 2 ("The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression, although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity"), Article 4 ("The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter"). See also: Simma, *The Charter of the United Nations*, above note 16, 722 ("The GA has provided a definition of the concept of aggression, but this definition is neither intended nor able to limit the jurisdiction of the Security Council under Article 39. However, the SC might use it as a basis for an own determination").

sanctions régime.¹⁷⁴ Moreover, even on that occasion the Council immediately proceeded to make a clear determination of a threat to the peace, thus suggesting that the relevant acts of aggression formed one of a number of background factors combining to form a threat to the peace, rather than constituting the primary reason for the application of sanctions.¹⁷⁵ The Council's apparent reluctance in practice to make acts of aggression the primary trigger for the employment of sanctions, combined with the fact that instances of aggression can in any case be characterized as breaches of or threats to the peace,¹⁷⁶ suggests that sanctions-related determinations of acts of aggression will continue to be rare in future.

¹⁷⁴ S/RES/418 (4 November 1977), preambular paragraph 2 (recognizing that "the military build-up by South Africa and its persistent acts of aggression against neighbouring States" seriously disturbed the security of those States).

The Security Council has, however, referred to the "aggressive acts", "acts of aggression" or "aggression" of targets against which sanctions were already being applied, doing so in the case of the sanctions régimes against Southern Rhodesia, South Africa and Iraq. In relation to Southern Rhodesia, see: S/RES/326 (2 February 1973), preambular paragraphs 2, 5; S/RES/328 (10 March 1973), operative paragraph 2; S/RES/386 (17 March 1976), preambular paragraph 3, operative paragraph 2; S/RES/423 (14 March 1978), preambular paragraph 3; S/RES/424 (17 March 1978), preambular paragraphs 3, 6, 8; S/RES/445 (8 March 1979), preambular paragraphs 5, 7; S/RES/455 (23 November 1979), preambular paragraphs 3, 4, 5, 6, 8, operative paragraphs 1, 4, 5. In relation to South Africa, see: S/RES/418 (4 November 1977), preambular paragraph 2; S/RES/455 (23 November 1979), operative paragraph 2; S/RES/546 (6 January 1984), preambular paragraph 3, operative paragraph 3; S/RES/571 (20 September 1985), preambular paragraphs 3, 4, 6, 7, operative paragraphs 3, 5, 6, 8; S/RES/574 (7 October 1985), preambular paragraphs 4, 5, operative paragraphs 1, 2, 3, 6, 7. In relation to Iraq, see: S/RES/667 (16 September 1990), preambular paragraph 6, operative paragraph 1. Interestingly, a reference to the Iraqi invasion of Kuwait as an act of aggression had been included in the original draft resolution for what was to become resolution 660 (1990), but it was removed due to the objections of the USSR. See: Greenwood, Christopher, 'New World Order or Old?: the Invasion of Kuwait and the Rule of Law' (1992) 55 *Modern LR* 153-78, 159.

¹⁷⁵ For the determination of a threat to the peace, see S/RES/418 (4 November 1977), operative paragraph 1. For the provision applying sanctions against South Africa, see operative paragraph 2 of that resolution 418 (1977). For discussion of the Council's determination of a threat to the peace in the case of South Africa, see section 6.1.2, above.

¹⁷⁶ Kelsen, *The Law of the United Nations*, above note 167, 727 ("Breaches of the peace' include 'acts of aggression.' It is superfluous to mention 'acts of aggression'"); Dinstein, Yoram, *War, Aggression and Self-Defence* (1994: 2nd ed.) Cambridge UP, Cambridge, 283 ("Attempts are sometimes made to demarcate an unblurred line between the categories of a breach of the peace and aggression. But the Charter (or, for that matter, the practice of the Council) does not provide any clear guidance in discriminating between the two expressions. In pragmatic terms, as long as the authority of the Council to act in a given context is unassailable under the Charter, it is of little consequence whether one stamp or the other is affixed to the measures concerned"); Simma, *The Charter of the United Nations*, above note 16, 722 ("Aggression

6.2 Invoking Article 41 and Chapter VII of the Charter

In addition to making a determination of a threat to the peace, breach of the peace or act of aggression, before imposing sanctions the Council generally invokes either the specific basis in the Charter of the United Nations for the application of sanctions – Article 41 – or the more general basis of Chapter VII. Explicit invocations of Article 41 have in fact been few and far between, with the Council only referring to that provision as the basis for the application of sanctions on a handful of occasions.¹⁷⁷ In most instances, the Council has simply noted that it was acting under Chapter VII of the Charter before applying, modifying or terminating sanctions.¹⁷⁸ It is unclear why the Security Council has not invoked Article 41

presumes the direct or indirect application of the use of force; thus, it always constitutes a breach of the peace, too”).

¹⁷⁷ The Council has made rare explicit references to Article 41 in resolutions connected with the sanctions régimes against Southern Rhodesia and UNITA. In connection with the Southern Rhodesia sanctions régime, see: S/RES/232 (16 December 1966), preambular paragraph 4 (“Acting in accordance with Articles 39 and 41 of the Charter”); S/RES/253 (29 May 1968), operative paragraph 9 (requesting all States Members of the United Nations or of the specialized agencies to take “all possible further action under Article 41 of the Charter” to deal with the situation in Southern Rhodesia); S/RES/277 (18 March 1970), operative paragraphs 9 (deciding to apply additional sanctions, “in accordance with Article 41 of the Charter”) 11 (requesting all States Members of the United Nations or of the specialized agencies to take “all possible further action under Article 41 of the Charter” to deal with the situation in Southern Rhodesia); and S/RES/409 (27 May 1977), operative paragraph 3 (deciding that the 253 Committee would report to the Council on the possible application of further measures under Article 41). In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraph 6 (undertaking to consider by a certain date the application of additional measures against UNITA “under Article 41 of the Charter”).

¹⁷⁸ In general, resolutions applying, modifying or terminating sanctions have included a provision noting that the Council was “acting under Chapter VI of the Charter”. For the relevant references with respect to each sanctions régime, see Table [XX], located in the Appendices. For examples of resolutions that have modified or terminated sanctions régimes without explicitly invoking either Article 41 or Chapter VII, see: S/RES/460 (21 December 1979) (operative paragraph 2, which terminates the Southern Rhodesian sanctions régime, records the decision to terminate the measures “taken against Southern Rhodesia under Chapter VII”, without invoking Chapter VII in connection with the action of terminating the sanctions); S/RES/743 (21 February 1992) (providing an exemption – in operative paragraph 11 – from the former Yugoslavia sanctions régime for weapons and military equipment for the use of the United Nations Protection Force, without specifying the constitutional basis for that action); S/RES/1312 (31 July 2000) (providing an exemption – in operative paragraph 5 – from the sanctions régime against Ethiopia and Eritrea, without specifying the constitutional basis for that action. Interestingly, however, the Council subsequently explicitly referred to this resolution after invoking Chapter VII in connection with a provision outlining an additional

on a more regular basis, as the invocation of the more general Chapter VII does not appear to add anything significant over and above what a more specific reference to Article 41 would provide.¹⁷⁹ It is understandable that, in instances where the Council makes authorisations of the use of military force in a manner that does not appear to have been envisaged by the founders of the Charter, it might wish to locate the basis of such action in Chapter VII in general rather than in Article 42 of the Charter. In connection with the application or modification of sanctions régimes, however, the constitutional basis is so clearly located in Article 41 that a general reference to Chapter VII does not provide any meaningful additional flexibility or strengthen the Council's hand in terms of the implementation of sanctions.

6.3 Outlining the objectives of sanctions

As U.N. sanctions are imposed under Chapter VII of the Charter of the United Nations, the general objective of any sanctions régime will be to address the threat to the peace, breach of the peace or act of aggression that led to the imposition of sanctions, and thus to maintain or restore international peace and security. In addition to that general objective, however, sanctions régimes generally possess a more specific objective, or set of objectives, the achievement of which should ensure the maintenance or restoration of peace and thus lead to the termination of sanctions. Thus, although the specific objectives of a sanctions régime stem from the general objectives of addressing the identified threat to the peace, breach of the peace or act of aggression and maintaining or restoring international

exemption from the sanctions régime: see S/RES/1320 (15 September 2000), operative paragraph 10).

peace and security, they are usually more detailed, consisting of particular steps that must be taken by the target to ensure that the sanctions are suspended or terminated.¹⁸⁰

Although the Security Council has not always articulated the specific objectives of its sanctions régimes in a methodical manner, it often provides at least an indication of those objectives. Such indications usually appear the form of demands made of the target, of an expression of the Council's readiness to consider suspending or terminating the sanctions upon the satisfaction of certain conditions, or of a statement that the sanctions shall be imposed until certain developments have occurred. Analysis of those indications illustrates that the Security Council has imposed or maintained sanctions in order to achieve the following general categories of objectives: (a) Ending a rebellion, invasion or act of external interference; (b) Restoring to power a legitimate Government; (c) Facilitating the exercise or

¹⁷⁹ Österdahl, *Threat to the Peace*, above note 19, 89 ("In the case of non-military enforcement measures it is ... difficult to see why the Security Council only refers to "Chapter VII" since Article 41 easily covers the non-military enforcement measures taken by the Council").

¹⁸⁰ As this section is designed to document the manner in which the practice of the Council has contributed to the evolution of the U.N. sanctions framework, the focus here is upon the explicit objectives of sanctions régimes. In addition to the explicit general and specific objectives, however, there may of course be other factors motivating the Council as a whole, or certain of its members, to seek the imposition or continued application of sanctions. For analysis of the many potential implicit objectives of sanctions, see: Doxey, Margaret P., *International sanctions in Contemporary perspective* (1987) Macmillan, London, 90-97 (exploring the various potential "motives and purposes" of international sanctions); Doxey, Margaret P., *International Sanctions in Contemporary Perspective* (2nd ed. 1996) St. Martin's Press, NY, 54-8 (outlining and categorizing the potential goals of international sanctions, including U.N. sanctions, some or all of which might be at play in a given sanctions régime).

The Libya sanctions régime provides one example of which implicit objectives. That régime remained in a state of suspended animation for more than four years after Libya handed over for trial before a Scottish court in the Netherlands the two suspects for the Lockerbie bombing. Eventually the régime was terminated, after the Libyan Government agreed to pay compensation to the relatives of the victims of Pan Am flight 103. The payment of such compensation had not featured as an explicit objective of the sanctions régime. Thus, although it was an important factor in the ultimate termination of that régime, it was not something that Libya was required to do by the decisions of the Council. Rather, it was an implicit objective pursued by certain members of the Council. For further discussion of the explicit objectives of the Libya sanctions régime, see section 6.3.6, below.

protection of human rights; (d) Bringing about disarmament or arms control; (e) Facilitating the establishment and consolidation of peace; and (f) Addressing international terrorism.

6.3.1 Ending a rebellion, invasion or external interference

The Security Council applied sanctions with the objective of ending a rebellion in the case of the illegal régime in Southern Rhodesia.¹⁸¹ Bringing about the withdrawal of an invading force was a major objective of the sanctions régimes against Iraq and the Federal Republic of Yugoslavia (Serbia-Montenegro).¹⁸² In the case of the Iraq sanctions, the Council also sought to ensure that Iraq paid compensation for liabilities arising from its invasion of Kuwait.¹⁸³ Securing the cessation of external forms of interference formed one of the objectives of the main objectives of the sanctions régimes against the Federal Republic of Yugoslavia (Serbia-Montenegro) and Liberia (in the second instance).¹⁸⁴ In the case of

¹⁸¹ In the case of Southern Rhodesia, one objective of the sanctions régime was to bring the rebellion in Southern Rhodesia to an end. See, e.g., S/RES/232 (16 December 1966), preambular paragraph 2; S/RES/253 (29 May 1968), preambular paragraph 3 and operative paragraph 3; S/RES/277 (18 March 1970), operative paragraph 9; S/RES/288 (17 November 1970), operative paragraph 2; S/RES/326 (2 February), operative paragraph 4; S/RES/423 (14 March 1978), in general.

¹⁸² The aim of ensuring the withdrawal of an invading force formed a major objective of the sanctions régimes against Iraq and the Federal Republic of Yugoslavia (Serbia-Montenegro). In connection with Iraq, see: S/RES/661 (6 August 1990), operative paragraph 2 (deciding to apply sanctions in order to secure Iraq's compliance with the demand that it withdraw immediately and unconditionally its forces from Kuwait). In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 3 (deciding that the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) would be applied until that country had complied with the requirements of resolution 752 (1992), one of which was that those units of the former Yugoslav People's Army and elements of the Croatian Army then in Bosnia and Herzegovina be withdrawn, or become subject to the authority of the government of Bosnia and Herzegovina, or be disbanded and disarmed with their weapons placed under effective international monitoring: S/RES/752 (15 May 1992), operative paragraph 4)..

¹⁸³ In the case of Iraq, after the Gulf War one of the objectives of the sanctions régime became to ensure the establishment of a compensation fund to cover the losses incurred by foreign governments, nationals and corporations. See: S/RES/687 (3 April 1991), operative paragraph 22 (deciding that the comprehensive and financial sanctions would be terminated once Iraq had established a compensation programme and complied with the disarmament requirements).

¹⁸⁴ One of the initial objectives of the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro) was to ensure that that country ceased engaging in interference in

the sanctions régime against Haiti, one objective was securing the departure from the target of key players in a *coup d'état*.¹⁸⁵

6.3.2 Restoring a legitimate and/or democratically-elected Government to power

The Security Council applied sanctions with the objective of restoring the authority of a legitimate Government in the case of the sanctions régime against Iraq.¹⁸⁶ In the case of

Bosnia and Herzegovina. See: S/RES/757 (30 May 1992), operative paragraph 3 (deciding that the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) would be applied until that country had complied with the requirements of resolution 752 (1992), one of which was that all forms of interference from outside Bosnia and Herzegovina cease immediately and that Bosnia and Herzegovina's neighbours take swift action to end all such interference: S/RES/752 (15 May 1992), operative paragraph 3.

In the case of the sanctions régime imposed against Liberia (in the second instance), the major objective was to ensure that Liberia ceased interfering in events in neighbouring Sierra Leone, by refraining from providing support to the armed rebel group the Revolutionary United Front (RUF). See: S/RES/1343 (7 March 2001), operative paragraphs 2 [detailing a number of specific goals. Among the more specific goals connected to that overall objective, the Council demanded that the Liberian Government take the following concrete steps: (a) Expel all RUF members from Liberia and prohibit all RUF activities on its territory (operative paragraph 2(a)); (b) Cease all financial and military support to the RUF and take steps to ensure that no such support was provided from Liberia or by Liberian nationals (operative paragraph 2(b)); (c) Cease all import of Sierra Leone rough diamonds controlled through the Certificate of Origin regime of the Government of Sierra Leone, in accordance with resolution 1306 (2000) (operative paragraph 2(c)); (d) Freeze funds or financial resources or assets that were made available by its nationals or within its territory for the benefit of the RUF or entities owned or controlled by the RUF (operative paragraph 2 (d)); and (e) Ground all Liberia-registered aircraft operating within its jurisdiction until it updated its register of aircraft pursuant to Annex VII to the Chicago Convention on International Civil Aviation of 1944 and provide the Council with updated information concerning the registration and ownership of each aircraft registered in Liberia (operative paragraph 2 (e))], 8, 9, 10, 11 (each containing statements to the effect that the sanctions would be terminated once Liberia had complied with the demands in operative paragraph 2); S/RES/1408 (6 May 2002), operative paragraph 5 (deciding to extend the sanctions and noting that at the end of the period of extension it would decide whether to terminate the sanctions, based upon an assessment of whether Liberia had complied fully with the demands of operative paragraph 2 of resolution 1343 (2001)); S/RES/1478 (6 May 2003), operative paragraphs 1, 3, 10, 12, 17 (reaffirming that the objective of the sanctions remained achieving the compliance of the Liberian Government with the demands outlined in resolution 1343 (2001).

¹⁸⁵ See: S/26747 (15 November 1993): *Presidential statement of 15 November 1993* (stressing that the sanctions would remain in force until the objectives of the Governor's Island Agreement were fulfilled, including the departure of the Commander-in-Chief of the Haitian armed forces); S/RES/917 (6 May 1994), operative paragraph 18(a) (deciding that the sanctions would not be terminated until certain conditions had been satisfied, including the retirement of the Commander-in-Chief of the Haiti Armed Forces and the resignation or departure from Haiti of the Chief of Police of Port-au-Prince and the Chief of Staff of the Haiti Armed Forces), operative paragraph 18(b) (deciding that the sanctions would not be terminated until certain conditions

the sanctions régimes against Haiti and Sierra Leone, major objectives included: the reinstatement of a democratically-elected Government (both Haiti and Sierra Leone),¹⁸⁷ ensuring the return of constitutional order (both Haiti and Sierra Leone),¹⁸⁸ and bringing about the restoration of democracy (Haiti).¹⁸⁹ In the case of the sanctions régimes against

had been satisfied, including the change of leadership of the police and military high command in Haiti, as required by the Governor's Island Agreement).

¹⁸⁶ Restoring the authority of a legitimate Government was one of the objectives of the sanctions régime against Iraq. See: S/RES/661 (6 August 1990), operative paragraph 2 (deciding to apply sanctions in order to secure Iraq's compliance with the demand that it withdraw immediately and unconditionally its forces from Kuwait and to restore the authority of the legitimate Government of Kuwait).

¹⁸⁷ In connection with Haiti, see: S/RES/841 (16 June 1993), operative paragraph 16 (expressing willingness to consider lifting the sanctions if the Secretary-General reported that the *de facto* authorities in Haiti had signed and begun implementing in good faith an agreement to reinstate the government of President Jean-Bertrand Aristide); S/RES/873 (13 October 1993), operative paragraph 1 (providing that the sanctions, which had been suspended but were about to be reimposed, might not be reimposed if the Secretary-General were to report that the authorities in Haiti were implementing in full the agreement to reinstate the legitimate Government of President Aristide and had established the necessary measures to enable the United Nations Mission in Haiti (UNMIH) to carry out its mandate); S/26747 (15 November 1993): *Presidential statement of 15 November 1993* (stressing that the sanctions would remain in force until the objectives of the Governor's Island Agreement were fulfilled, including the return of the democratically-elected President Aristide); S/RES/917 (6 May 1994), preambular paragraph 8 (reaffirming that the goal of the international community remained the restoration of democracy in Haiti and the return of President Aristide); S/RES/940 (31 July 1994), preambular paragraph 8 (reaffirming that the goal of the international community remained the restoration of democracy in Haiti and the prompt return of President Aristide), operative paragraph 17 (noting that the sanctions would be lifted following the return to Haiti of President Aristide); S/RES/944 (29 September 1994), operative paragraph 4 (deciding that the Haiti sanctions régime would be terminated on the day after President Aristide had returned to Haiti). In connection with Sierra Leone, see: S/RES/1132 (8 October 1997), operative paragraphs 1 (demanding that the military junta take immediate steps to relinquish power in Sierra Leone and make way for restoration of democratically elected Government and a return to constitutional order), 19 (expressing the intention to terminate the sanctions when the demand in operative paragraph 1 had been complied with).

¹⁸⁸ In connection with Haiti, see: S/26747 (15 November 1993): *Presidential statement of 15 November 1993* (stressing that the sanctions would remain in force until the objectives of the Governor's Island Agreement were fulfilled, including the creation of a new police force permitting the restoration of constitutional order); S/RES/917 (6 May 1994), operative paragraph 18(e) (deciding that the sanctions would not be terminated until certain conditions had been satisfied, including the return of the democratically elected President and the maintenance of constitutional order). In connection with Sierra Leone, see: S/RES/1132 (8 October 1997), operative paragraphs 1 (demanding that the military junta take immediate steps to relinquish power in Sierra Leone and make way for restoration of democratically elected Government and a return to constitutional order), 19 (expressing the intention to terminate the sanctions when the demand in operative paragraph 1 had been complied with).

¹⁸⁹ S/RES/917 (6 May 1994), preambular paragraph 8 (reaffirming that the goal of the international community remained the restoration of democracy in Haiti and the return of President Aristide),

Sierra Leone and UNITA, the Council also sought to ensure the re-establishment of Government control throughout Sierra Leone and Angola.¹⁹⁰

6.3.3 Facilitating the exercise or protection of human rights

The Security Council has imposed sanctions with the objective of facilitating the exercise or protection of human rights on a number of occasions. Sanctions have thus been applied: to enable the exercise of self-determination and independence (in the cases of Southern Rhodesia and South Africa),¹⁹¹ to eliminate *apartheid* (South Africa);¹⁹² to bring

operative paragraph 18(e) (deciding that the sanctions would not be terminated until certain conditions had been satisfied, including the return of the democratically elected President and the maintenance of constitutional order); S/RES/940 (31 July 1994), preambular paragraph 8 (again reaffirming that the goal of the international community remained the restoration of democracy in Haiti and the prompt return of President Aristide), operative paragraph 17 (affirming readiness to review the sanctions with a view to lifting them immediately following the return to Haiti of President Aristide).

¹⁹⁰ In connection with UNITA, see: S/RES/1173 (12 June 1998), operative paragraph 2 (demanding that UNITA cooperate fully in the immediate extension of State administration throughout the national territory. That demand had been a requirement of both the Acordos de Paz and the Lusaka Protocol). In connection with Sierra Leone, see: S/RES/1171 (5 June 1998), operative paragraph 7 (expressing readiness to terminate the sanctions once the control of the Government of Sierra Leone had been fully re-established over all its territory, and when all non-governmental forces had been disarmed and demobilized); S/RES/1306 (5 July 2000), operative paragraph 6 (affirming that that a key factor in determining whether to extend the diamond sanctions would be the extent of the Government's authority over the diamond-producing areas); S/RES/1385 (19 December 2001), operative paragraph 3 (affirming that that a key factor in determining whether to extend the diamond sanctions would be the extent of the Government's authority over the diamond-producing areas); S/RES/1446 (4 December 2002), operative paragraph 2 (affirming that that a key factor in determining whether to extend the diamond sanctions would be the extent of the Government's authority over the diamond-producing areas).

¹⁹¹ In connection with Southern Rhodesia, see: S/RES/232 (16 December 1966), operative paragraph 4; S/RES/253 (29 May 1968), preambular paragraphs 7, 8, operative paragraph 2; S/RES/277 (18 March 1970), preambular paragraph 5, operative paragraph 4; S/RES/288 (17 November 1970), preambular paragraph 4, operative paragraph 2; S/RES/318 (28 July 1972), operative paragraphs 1, 2; S/RES/326 (2 February), preambular paragraph 3; S/RES/328 (10 March 1973), preambular paragraph 7, operative paragraph 3; S/RES/386 (17 March 1976), preambular paragraph 4; S/RES/403 (14 January 1977), preambular paragraph 3; S/RES/424 (17 March 1978), preambular paragraph 4; S/RES/445 (8 March 1979), preambular paragraph 8; S/RES/448 (30 April 1979), preambular paragraph 7; S/RES/460 (21 December 1979), operative paragraph 1; S/RES/463 (2 February 1980), operative paragraph 1. In the case of South Africa, statements reflecting the objective of enabling self-determination and independence took the form of affirmations of the need to bring about the establishment of a democratic society and the enjoyment of equal rights by all South African citizens. For decisions related to bringing about the establishment of a democratic society, see: S/RES/473 (13 June 1980), preambular

about the occurrence of free and fair elections (the Federal Republic of Yugoslavia (Serbia-Montenegro), the Bosnian Serbs and Haiti);¹⁹³ to secure the enjoyment of minority rights within a target, including greater autonomy and self-administration (Kosovo, in the case of the sanctions régime against the Federal Republic of Yugoslavia);¹⁹⁴ to bring an end to acts of repression against a civilian population (also in the Kosovo instance);¹⁹⁵ and to facilitate the return of refugees and displaced persons (Kosovo again).¹⁹⁶

paragraph 7, operative paragraph 4; S/RES/569 (26 July 1985), preambular paragraph 5, operative paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7. For decisions related to the objective of bringing about the enjoyment of equal rights by all South African citizens, see: S/RES/473 (13 June 1980), preambular paragraph 7, operative paragraphs 4 and 7; S/RES/569 (26 July 1985), preambular paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7.

¹⁹² S/RES/418 (4 November 1977), preambular paragraph 1; S/RES/473 (13 June 1980), preambular paragraph 7, operative paragraph 4, 7; S/RES/569 (26 July 1985), operative paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7; S/RES/765 (16 July 1992), operative paragraph 7.

¹⁹³ In connection with the sanctions régimes against both the Federal Republic of Yugoslavia (Serbia-Montenegro) and the Bosnian Serbs, see: S/RES 1022 (22 November 1995), operative paragraph 4 (deciding that the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) and the sanctions against the Bosnian Serbs would be terminated on the tenth day following the occurrence of free and fair elections in Bosnia and Herzegovina, provided that the Bosnian Serbs had withdrawn from the zones of separation as stipulated in the Bosnian Peace Agreement). In connection with Haiti, see: S/RES/917 (6 May 1994), operative paragraph 18(c) (listing as one of the conditions for the termination of the sanctions the adoption of legislative actions called for in the Governor's Island Agreement and the creation of an environment in which free and fair elections could be organized).

¹⁹⁴ S/RES/1160 (31 March 1998), operative paragraph 5 (expressing support for "an enhanced status for Kosovo which would include a substantially greater degree of autonomy and meaningful self-administration"); S/RES/1199 (23 September 1998), preambular paragraph 12 (reaffirming support for a peaceful resolution of the Kosovo problem, including an enhanced status for Kosovo, a substantially greater degree of autonomy, and meaningful self-administration); S/RES/1203 (24 October 1998), preambular paragraph 8 (recalling its support for a peaceful resolution of the Kosovo problem, including an enhanced status for Kosovo, a substantially greater degree of autonomy, and meaningful self-administration); S/RES/1244 (10 June 1999), preambular paragraph 11 (reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo).

¹⁹⁵ S/RES/1160 (31 March 1998), operative paragraph 16 (deciding to review the situation on the basis of whether the Federal Republic of Yugoslavia had taken a number of steps, including withdrawing its special police units and preventing action by its security forces against the civilian population); S/RES/1199 (23 September 1998), operative paragraph 4 (demanding that the Federal Republic of Yugoslavia implement immediately a number of measures towards achieving a political solution to the situation in Kosovo, including: ceasing all action by security forces affecting the civilian population and withdraw the security units used for civilian repression; and agreeing with the Kosovo Albanian community on a timetable for

6.3.4 Bringing about disarmament or arms control

The Security Council has incorporated disarmament-related objectives in a number of its sanctions régimes. Among those objectives have been: containing an aggressive target (South Africa);¹⁹⁷ bringing about a target's complete disarmament (Iraq);¹⁹⁸ securing a target's cooperation with an arms control monitoring body (Iraq);¹⁹⁹ inducing targets to

implementing confidence-building measures and finding a political solution to the situation in Kosovo).

¹⁹⁶ S/RES/1199 (23 September 1998), operative paragraph 4 (demanding that the Federal Republic of Yugoslavia implement immediately a number of measures towards achieving a political solution to the situation in Kosovo, including facilitating, in agreement with the UNHCR and the ICRC, the safe return of refugees and displaced persons and free and unimpeded access to Kosovo for humanitarian organizations and supplies).

¹⁹⁷ In the case of South Africa, the most explicit objective of the sanctions régime was to prevent South Africa from acquiring arms, so as to diminish the South African Government's capacity to pose a threat to international peace and security. See: S/RES/418 (4 November 1977), operative paragraphs 1 and 2; S/RES/558 (13 December 1984), preambular paragraphs 4, 5.

¹⁹⁸ After the Gulf War one of the major objectives of the Iraq sanctions régime became ensuring Iraq's complete disarmament. See in general: S/RES/687 (3 April 1991), operative paragraphs 8, 9, 10, 12, 22. In order to comply with its obligation to disarm completely, Iraq was required to undertake the following measures: (a) To accept unconditionally the destruction, removal or rendering harmless of all chemical and biological weapons (S/RES/687 (3 April 1991), operative paragraph 8(a)) and all ballistic missiles with a range greater than one hundred and fifty kilometres (S/RES/687 (3 April 1991), operative paragraph 8(b)); (b) To agree to on-site inspection of its armament facilities (S/RES/687 (3 April 1991), operative paragraph 9(a)); and (c) To refrain from the use, development, construction or acquisition of chemical and biological weapons (S/RES/687 (3 April 1991), operative paragraph 10), ballistic missiles with a range greater than one hundred and fifty kilometres (S/RES/687 (3 April 1991), operative paragraph 10), and nuclear weapons (S/RES/687 (3 April 1991), operative paragraph 12).

¹⁹⁹ The Council made it clear that the objectives of the Iraq sanctions included ensuring that Iraq cooperated unconditionally with the United Nations Special Commission (UNSCOM), the United Nations Monitoring Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA). In relation to cooperation with UNSCOM, in late-1997 the Council imposed targeted travel sanctions against particular Iraqi officials, making it clear that the objective of those sanctions was to ensure that Iraq cooperated unconditionally with the United Nations Special Commission (UNSCOM), whose task it was to monitor and verify Iraq's compliance with its disarmament obligations under the sanctions régime. See: S/RES/1137 (12 November 1997), operative paragraph 6 (deciding that the targeted travel sanctions imposed by that resolution would terminate one day after the Executive Chairman of UNSCOM had reported to the Council that Iraq was cooperating unconditionally with UNSCOM). With respect to cooperation with UNMOVIC and the IAEA, in late-1999 the Council created the United Nations Monitoring Verification and Inspection Commission (UNMOVIC) to replace UNSCOM. At the same time it provided that, if Iraq were to cooperate with UNMOVIC and the IAEA, and if they were both to report to the Council that the system of ongoing monitoring and verification was fully operational, then the elements of the sanctions régime not connected to arms and related *matériel* would be suspended for a renewable period of 120 days: S/RES/1284 (17 December 1999), operative paragraph 33. By providing for that possibility the Council signalled that the major objective of the components

conclude and implement a regional arms control agreement (former Yugoslavia);²⁰⁰ and securing the disarmament and demobilization of rebel groups (Sierra Leone and certain actors in the DRC).²⁰¹

6.3.5 Facilitating the establishment and consolidation of peace

Although as noted above the underlying objective of any sanctions régime should be the maintenance or restoration of peace and security, on a number of occasions the Council has articulated particular objectives associated with the establishment and consolidation of peace. Among those objectives have been the following: establishing peace and stability in general (the former Yugoslavia, Somalia, Liberia (in the first instance), and the Federal Republic of Yugoslavia);²⁰² bringing about a peaceful, definitive settlement to a conflict

of the sanctions régime not directed at arms and related *matériel* was to ensure that the system of monitoring and verification was fully operational.

²⁰⁰ S/RES/1021 (22 November 1995), operative paragraph 1 (deciding that the sanctions against the former Yugoslavia would be terminated upon the conclusion and entry into force of a regional arms control agreement, which formed part of the overall proposed Peace Agreement, by the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia (Serbia and Montenegro).

²⁰¹ In connection with Sierra Leone, see: S/RES/1171 (5 June 1998), operative paragraph 7 (expressing readiness to terminate the sanctions once the control of the Government of Sierra Leone had been fully re-established over all its territory, and when all non-governmental forces had been disarmed and demobilized). In connection with the DRC, see: S/RES/1493 (28 July 2003), operative paragraph 22 (deciding to review the situation in the DRC in twelve months, with a view to renewing the sanctions if no significant progress had been made in the peace process, including in particular if support were still being provided to armed groups, if there were no effective ceasefire, and if there had not been progress in the disarmament, demobilization, repatriation, reintegration or resettlement (“DDRRR”) of foreign and Congolese armed groups).

²⁰² In connection with the former Yugoslavia, see: S/RES/713 (25 September 1991), operative paragraph 6. In that resolution the Council did not set particular conditions for the suspension or termination of the sanctions, stating that the embargo would remain in place until it “decide[d] otherwise following consultation between the Secretary-General and the Government of Yugoslavia” (see also operative paragraph 6). In connection with Somalia, see: S/RES/733 (23 January 1992), operative paragraph 5. As with the sanctions régime against the former Yugoslavia, in relation to Somalia the Council simply stated that the embargo would remain in place until it decided otherwise (see also operative paragraph 5). Unlike the case of the former Yugoslavia, however, the Council has not subsequently set any explicit requirements for the termination of the sanctions. In connection with Liberia (in the first instance), see: S/RES/788 (19 November 1992), operative paragraph 8. As with the régimes against the former Yugoslavia and Somalia, the Council set no explicit requirements for

between two countries (Ethiopia and Eritrea);²⁰³ ensuring the establishment and observance of cease-fires (the Federal Republic of Yugoslavia (Serbia-Montenegro), the Bosnian Serbs, UNITA, Rwanda, Ethiopia and Eritrea and certain actors in the DRC);²⁰⁴ securing the engagement of the target or other relevant actors in a peace process (the Federal

termination of the sanctions, stating that they would remain in place until it (the Council) decided otherwise (see also operative paragraph 8). In fact, it was notable that the Council did not terminate the arms embargo in July 1997 after welcoming both the successful holding of presidential and legislative elections and the fact that the elections had been certified as “free and fair” by the Chairman of ECOWAS and the U.N. Secretary-General. See: S/PRST/1997/41 (30 July 1997): *Presidential statement of 30 July 1997*. The joint statement of certification that the elections had been free and fair was contained in: S/1997/581 (24 July 1997), annex. In connection with the Federal Republic of Yugoslavia, see: S/RES/1160 (31 March 1998), operative paragraph 8 (deciding that all States should apply sanctions, for the purposes of fostering peace and stability in Kosovo).

²⁰³ S/RES/1298 (17 May 2000), operative paragraph 17 (deciding that the sanctions would be terminated immediately if the Secretary-General were to report that there had been a peaceful, definitive settlement to the conflict between Ethiopia and Eritrea).

²⁰⁴ In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 3 (deciding that the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) would be applied until that country had complied with the requirements of resolution 752 (1992), one of which was that all parties involved in Bosnia and Herzegovina stop fighting immediately, respect the cease-fire of 12 April and cooperate with the efforts of the EC to bring about a negotiated settlement: S/RES/752 (15 May 1992), operative paragraph 1). In the case of the Bosnian Serbs one of the objectives was to ensure the withdrawal behind zones of separation of Bosnian Serb forces. See: S/RES/1022 (22 November 1995), operative paragraph 2 (deciding that the proposed suspension of the sanctions would not take place until the day after the Bosnian Serb forces had withdrawn behind the zones of separation established in the Peace Agreement), operative paragraph 4 (deciding that the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) and the sanctions against the Bosnian Serbs would be terminated on the tenth day following the occurrence of free and fair elections in Bosnia and Herzegovina, provided that the Bosnian Serbs had withdrawn from the zones of separation as stipulated in the Bosnian Peace Agreement). In connection with UNITA, see: S/RES/864 (15 September 1993), operative paragraph 17 (deciding that the sanctions against UNITA would come into force ten days later unless the Secretary-General notified it that an effective cease-fire had been established and that agreement had been reached on the implementation of the Peace Accords (‘Acordos de Paz’) and relevant Security Council resolutions). In connection with Rwanda, see: S/RES/918 (17 May 1994), operative paragraph 1 (demanding that the parties to the conflict immediately cease hostilities, agree to a cease-fire, and bring an end to the violence in Rwanda). In connection with Ethiopia and Eritrea, see: S/RES/1298 (17 May 2000), operative paragraph 2 (demanding that both parties cease immediately all military action and refrain from the further use of force); operative paragraph 3 (demanding that both parties withdraw their forces from military engagement and take no further action that would aggravate tensions). In connection with the DRC, see: S/RES/1493 (28 July 2003), operative paragraph 22 (deciding to review the situation in the DRC in twelve months, with a view to renewing the sanctions if no significant progress had been made in the peace process, including in particular if support were still being provided to armed groups, if there were no effective ceasefire, and if there had not been progress in the disarmament, demobilization, repatriation, reintegration or resettlement (“DDRRR”) of foreign and Congolese armed groups).

Republic of Yugoslavia (Serbia-Montenegro), the Bosnian Serbs, the Federal Republic of Yugoslavia, and Ethiopia and Eritrea);²⁰⁵ facilitating the implementation of, or progress in, a peace process (Haiti, UNITA and Rwanda, Liberia (in the second instance), and certain actors in the Democratic Republic of the Congo);²⁰⁶ bringing about progress in a process of

²⁰⁵

In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/820 (17 April 1993), operative paragraphs 10 (deciding that the sanctions would come into force nine days later, unless the Secretary-General had reported that the Bosnian Serbs had signed the Bosnian peace plan and had ceased its military actions) and 31 (expressing readiness to review the sanctions with a view to lifting them once all Bosnian parties had accepted the Bosnian peace plan and were cooperating in good faith in its implementation); S/RES/943 (23 September 1994), operative paragraph 4 (providing that the suspensions of sanctions outlined in the same resolution would terminate if the Secretary-General were to report that the authorities of the Federal Republic of Yugoslavia (Serbia-Montenegro) were not effectively implementing the sanctions against the Bosnian Serbs). In connection with the sanctions régime against the Bosnian Serbs, see also the provisions from resolution 820 (1993) just noted concerning the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro), as well as: S/RES/942 (23 September 1994), operative paragraph 3 (demanding that the Bosnian Serbs accept the proposed territorial settlement unconditionally and in full), operative paragraph 21 (expressing readiness to reconsider the sanctions if the Bosnian Serbs accepted the proposed territorial settlement unconditionally and in full). In connection with the Federal Republic of Yugoslavia, see: S/RES/1160 (31 March 1998), operative paragraph 1 (calling upon the Federal Republic of Yugoslavia to take the necessary steps to achieve a political solution to the issue of Kosovo through dialogue); S/RES/1160 (31 March 1998), operative paragraph 16 (deciding to review the situation on the basis of whether the Federal Republic of Yugoslavia had taken a number of steps, including beginning a substantive dialogue on "political status issues). In connection with Ethiopia and Eritrea, see: S/RES/1298 (17 May 2000), operative paragraph 4 (demanding that the parties reconvene substantive talks aimed at achieving a definitive peaceful settlement of the conflict). The Security Council stipulated that such talks should be carried out under OAU auspices, on the basis of the "Framework Agreement" and other arrangements suggested by the OAU as recorded in a *Communiqué* issued by the OAU current Chairman on 5 May 2000: S/2000/394, annex.

²⁰⁶

In connection with Haiti, see: S/RES/861 (27 August 1993), operative paragraph 3 (expressing readiness to terminate the sanctions if the Secretary-General were to conclude that the relevant provisions of the Governor's Island Agreement had been fully implemented); S/26747 (15 November 1993): *Presidential statement of 15 November 1993* (stressing that the sanctions would remain in force until the objectives of the Governor's Island Agreement were fulfilled, including the departure of the Commander-in-Chief of the Haitian armed forces, the creation of a new police force permitting the restoration of constitutional order, and the return of the democratically-elected President Aristide). In connection with UNITA, see: S/RES/864 (15 September 1993), operative paragraph 17 (deciding that the sanctions against UNITA would come into force ten days later unless the Secretary-General notified it that an effective cease-fire had been established and that agreement had been reached on the implementation of the Peace Accords ('Acordos de Paz') and relevant Security Council resolutions; S/RES/1127 (28 August 1997), operative paragraph 7 (deciding that the sanctions would come into force one month later, unless the Council had decided on the basis of a report of the Secretary-General that UNITA had taken concrete and irreversible steps to comply with its obligations under the 'Lusaka Protocol', including: demilitarizing its forces; transforming its radio station Vorgan into a non-partisan broadcasting facility; cooperating fully in the process of the normalization of State administration throughout Angola; immediately providing the Joint Commission,

national reconciliation (UNITA);²⁰⁷ and securing cooperation with peace-keeping operations or other peace-related international actors (Haiti and the Federal Republic of Yugoslavia).²⁰⁸

established under the Lusaka Protocol, with accurate and complete information on the strength of its armed personnel, so that verification, disarmament and demobilization could take place, in accordance with the Lusaka Protocol); S/RES/1295 (18 April 2000), preambular paragraph 5 (noting that the sanctions against UNITA were intended to promote a political settlement to the conflict in Angola, by requiring UNITA to comply with the obligations which it had undertaken under the Acordos de Paz and the Lusaka Protocol, and by curtailing the ability of UNITA to pursue its objectives by military means); S/RES/1432 (15 August 2002), operative paragraph 2 (deciding that the Council might consider reviewing the sanctions, taking into account all available information on the implementation of the peace accords). In connection with Rwanda, see: S/RES/918 (17 May 1994), preambular paragraph 6 (stressing the importance of the Arusha agreement to the peaceful resolution of the conflict in Rwanda and the necessity for the parties to the conflict to implement that agreement), operative paragraph 19 (inviting the Secretary-General and his Special Representative, in coordination with the Organization of African Unity and countries in the region, to continue their efforts to achieve a political settlement in Rwanda within the framework of the Arusha Peace Agreement). In connection with Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 3 (stressing that the Council's demands were intended to lead to progress in the peace process in Sierra Leone and calling upon the President of Liberia to ensure that the RUF met the following objectives: (a) Allowing the United Nations Mission in Sierra Leone (UNAMSIL) free access throughout Sierra Leone; (b) Releasing all abductees; (c) Entering its fighters in the disarmament, demobilization and reintegration process; and (d) Returning all weapons and other equipment seized from UNAMSIL); S/RES/1408 (6 May 2002), operative paragraph 3 (stressing that its demands were intended to lead to consolidation of the peace process in Sierra Leone and to further progress in the peace process in the Mano River Union as a whole); S/RES/1478 (6 May 2003), operative paragraph 3 (stressing that the demands it was making of the Liberian Government were intended to consolidate peace and stability in Sierra Leone and to build and strengthen peaceful relations among the countries of the region). In connection with the DRC, see: S/RES/1493 (28 July 2003), operative paragraph 22 (deciding to review the situation in the DRC in twelve months, with a view to renewing the sanctions if no significant progress had been made in the peace process, including in particular if support were still being provided to armed groups, if there were no effective ceasefire, and if there had not been progress in the disarmament, demobilization, repatriation, reintegration or resettlement ("DDRRR") of foreign and Congolese armed groups).

²⁰⁷ S/RES/1412 (17 May 2002), operative paragraph 2 (deciding that, in determining whether to extend the suspension of the travel sanctions against UNITA officials and their families, the Council would take into account the progress achieved in the process of national reconciliation).

²⁰⁸ In connection with Haiti, see: S/RES/873 (13 October 1993), operative paragraph 1 (providing that the sanctions, which had been suspended but were about to be reimposed, might not be reimposed if the Secretary-General were to report that the authorities in Haiti were implementing in full the agreement to reinstate the legitimate Government of President Aristide and had established the necessary measures to enable the United Nations Mission in Haiti (UNMIH) to carry out its mandate); S/RES/917 (6 May 1994), operative paragraph 18(d) (listing as one of the conditions for the termination of sanctions the creation of the proper environment for the deployment of UNMIH). UNMIH was established by the Security Council in September 1993, in order to assist the Government of Haiti in the implementation of the Governor's Island Agreement, which had called for assistance for modernizing the armed forces of Haiti and establishing a new police force with the presence of United Nations personnel. For the establishment of UNMIH, see S/RES/867 (23 September 1993), operative paragraphs 14. UNMIH's mandate was extended on a number of occasions, ultimately expiring in late June

6.3.6 Addressing international terrorism

The Council's sanctions régimes against Libya, the Sudan and Afghanistan/the Taliban/Al Qaida have each had as a major objective the goal of addressing international terrorism. In connection with some or all of those régimes the Council has also outlined the following particular objectives: securing the cooperation of a target with investigations into acts of terrorism (Libya, the Sudan and Afghanistan/the Taliban/Al Qaida);²⁰⁹ ensuring that a

1996: see S/RES/905 (23 March 1994), operative paragraph 2; S/RES/933 (30 June 1994), operative paragraph 1; S/RES/940 (31 July 1994), operative paragraphs 9-11 [revising as well as extending UNMIH's mandate]; S/RES/975 (30 January 1995), operative paragraph 8; S/RES/1007 (31 July 1994), operative paragraph 9; S/RES/1048 (29 February 1996), operative paragraph 5. UNMIH was succeeded by the United Nations Support Mission in Haiti, which was established by S/RES/1063 (28 June 1996), operative paragraph 2, in order to facilitate the transition back to democracy in Haiti. In connection with the Federal Republic of Yugoslavia, see: S/RES/1160 (31 March 1998), operative paragraph 16 (deciding to review the situation on the basis of whether the Federal Republic of Yugoslavia had taken a number of steps, including: allowing access to Kosovo to humanitarian organizations, representatives of the Contact Group and other embassies; accepting a mission by the Personal Representative of the Chairman-in-Office of the OSCE for the Federal Republic of Yugoslavia that would include a new and specific mandate for addressing the problems in Kosovo, as well as the return of the long-term missions of the OSCE; and facilitating a mission to Kosovo by the United Nations High Commissioner for Human Rights); S/RES/1199 (23 September 1998), operative paragraph 4 (demanding that the Federal Republic of Yugoslavia implement immediately a number of measures towards achieving a political solution to the situation in Kosovo, including: enabling continuous and effective monitoring in Kosovo by the EC Monitoring Mission and diplomatic missions accredited to the Federal Republic of Yugoslavia; and facilitating free and unimpeded access to Kosovo for humanitarian organizations and supplies).

209

In connection with the Libya, see: S/RES/748 (31 March 1992), operative paragraph 1 (deciding that Libya must cooperate with investigations into the bombings of Pan Am flight 103 and UTA flight 772 by the French, British and American governments), operative paragraph 3 (deciding that the sanctions would apply until the Council had decided that Libya had complied with aims including that Libya cooperate with investigations into the bombings); S/RES/883 (11 November 1993), operative paragraph 16 (reaffirming the initial objectives of the sanctions régime, whilst providing for the possibility that the sanctions might be suspended if the Secretary-General were to report to it that the Libyan Government had ensured the appearance of those charged with the bombing of Pan Am flight 103 before the appropriate United Kingdom or United States court and had satisfied that French judicial authorities with respect to the bombing of UTA flight 772); S/RES/1192 (27 August 1998), operative paragraph 8 (deciding that the sanctions would be suspended immediately if the Secretary-General were to report to it that the Lockerbie suspects had arrived in the Netherlands for the purpose of being tried before the Scottish Court, or if they had appeared for trial before an appropriate court in the United Kingdom or the United States. In connection with the Sudan, see: S/RES/1054 (26 April 1996), operative paragraph 1(a) (demanding that Sudan extradite to Ethiopia three suspects wanted in connection with the assassination attempt against the President of Egypt, which had taken place in Addis Ababa on 26 June 1995). In connection with the Taliban and Al Qaida, see: S/RES/1267 (15 October 1999), operative paragraph 1 (insisting that the Taliban cooperate with efforts to bring indicted terrorists to justice),

operative paragraph 2 (demanding that the Taliban turn over Bin Laden to appropriate authorities in a country where he had been indicted, or to appropriate authorities in a country where he would be returned to such a country, or to appropriate authorities in a country where he would be arrested and effectively brought to justice), operative paragraph 14 (deciding that the sanctions would be terminated once the Secretary-General had reported to the Security Council that the Taliban had turned over Usama Bin Laden to authorities in a country where he had been indicted); S/RES/1333 (19 December 2000), operative paragraph 1 (demanding again that the Taliban cooperate with efforts to bring indicted terrorists to justice), operative paragraph 2 (demanding that the Taliban turn over Bin Laden to appropriate authorities in a country where he had been indicted, or to appropriate authorities in a country where he would be returned to such a country, or to appropriate authorities in a country where he would be arrested and effectively brought to justice), operative paragraph 24 (deciding that the sanctions would be terminated once the Taliban had complied with the Council's demands).

target desists from assisting, supporting and providing shelter to terrorists (Libya, the Sudan and the Taliban and Al Qaida);²¹⁰ and inducing the formal renunciation of terrorism by a target (Libya).²¹¹

²¹⁰ In connection with Libya, see: S/RES/748 (31 March 1992), operative paragraph 2 (deciding that Libya must commit itself definitively to ceasing all forms of terrorism and all assistance to terrorist groups), operative paragraph 3 (deciding that the sanctions would apply until the Council had decided that Libya had complied with those aims). In connection with the Sudan, see: S/RES/1054 (26 April 1996), operative paragraph 1(b) (demanding that Sudan desist from assisting, supporting and facilitating terrorist activities and from giving shelter or sanctuary to terrorist elements). In connection with the Taliban and Al Qaida, see: S/RES/1267 (15 October 1999), operative paragraph 1 (insisting that the Taliban: cease providing sanctuary and training for international terrorists; take measures to ensure that its territory was not being used by terrorists or for the organization of terrorist acts against other States; and cooperate with efforts to bring indicted terrorists to justice); S/RES/1333 (19 December 2000), operative paragraph 1 (demanding again that the Taliban: cease providing sanctuary and training for international terrorists; take measures to ensure that its territory was not being used by terrorists or for the organization of terrorist acts against other States; and cooperate with efforts to bring indicted terrorists to justice), operative paragraph 3 (demanding that the Taliban close all terrorist camps on its territory), operative paragraph 24 (deciding that the sanctions would be terminated once the Taliban had complied with the Council's demands).

²¹¹ S/RES/748 (31 March 1992), operative paragraph 2 (deciding that Libya must commit itself definitively to demonstrating by concrete actions its renunciation of terrorism), operative paragraph 3 (deciding that the sanctions would apply until the Council had decided that Libya had complied with aims including that Libya renounce terrorism).

7. *Delineating the scope of U.N. sanctions*

One of the major decisions facing the Security Council when it imposes a sanctions régime is how to delineate the scope of the sanctions to be applied. As Article 41 contains an inclusive, rather than an exclusive or exhaustive, list of measures that might be taken to address threats to the peace, breaches of the peace or aggression, it provides the Security Council with the power to apply a wide variety of measures and grants it considerable flexibility to determine which particular measures might be appropriate for each individual case. This chapter describes the different types of sanctions that have been imposed by the Security Council when acting upon its sanctions powers.

In practice, the scope of sanctions employed by the Security Council has varied from sanctions régime to sanctions régime and even within a particular régime, as the Council has expanded or contracted the measures applied in order to induce or reward a target's compliance. With the exception of régimes consisting of basic arms embargoes, no two sanctions régimes have been the same. Often sanctions régimes contain a blend of the different types of sanctions available, meaning that it can be misleading to describe a particular sanctions régime according to a categorized term or phrase, such as "economic sanctions", "trade sanctions", "comprehensive sanctions", "targeted sanctions" or "smart sanctions". Nevertheless, in order to aid analysis, the sanctions applied by the Security Council can be broadly divided into the categories of economic and non-economic sanctions, with each of those broad categories containing numerous sub-categories.¹

¹ The division of types of sanctions into "economic" and "non-economic" is not unproblematic. Often, as part of the application of a sanctions régime that might be described as "economic", the Council also requires States to undertake activities whose character as "economic" is not clear. Thus, for example, in respect of the implementation of arms sanctions, the Council targets

Although an individual U.N. sanctions régime might not fall neatly into one of the categories or sub-categories described below, its various components will be reflected in the various categories and sub-categories.

In order to determine the scope of a particular sanctions régime at a particular time, it is necessary to take into account both the range of prohibitions directed against a target and any exemptions provided from those prohibitions. Analysis here considers both the different types of prohibitions that have been employed by the Security Council in its application of sanctions and any exemptions provided from those prohibitions by the Council. Although exemptions are most commonly provided from sanctions régimes that are comprehensive, almost every U.N. sanctions régime has contained exemptions of some kind. The application of exemptions is generally regulated by the relevant Sanctions Committee, with the Security Council stipulating whether the fact that an item or activity is exempt from sanctions means that States or other actors seeking to take advantage of that exemption must simply notify the relevant Committee or must seek the Committee's authorisation prior to importing or exporting the exempt product or engaging in the exempt activity.²

a product or commodity (i.e. arms and related *matériel*) that can be described as economic, but in a number of instances the Council has clarified that the arms sanctions require States to prevent the provision of assistance, advice or training in relation to the use, manufacture or maintenance of arms and related *matériel*. The character of those activities as economic is not so clear. For further discussion of issues related to the application of arms sanctions, see below.

² For further details relating to exemption responsibilities bestowed upon the Sanctions Committees, see Chapter 9, section 9.1.2.

7.1 Economic and financial sanctions

Economic sanctions are measures that aim to prevent the flow of commodities or products to or from a target.³ Financial sanctions are closely related to economic sanctions, but their focus is upon prohibiting the flow to and from the target of financial and economic resources, rather than commodities, products or supplies. Economic sanctions can be “comprehensive”, in which case they seek to halt the flow to and from a target of all commodities and products, or they can be “particular”, in which case they aim to prevent the flow to or from a target of particular commodities or products.⁴ In theory, particular economic sanctions might be employed against any product or commodity.

³ In sanctions terminology, a distinction is sometimes drawn between “embargoes” and “sanctions”, with the former representing prohibitions against the export to the target of a particular product or commodity and the latter encompassing either the export to or the import from the target of particular products or commodities. Thus, for example, sanctions upon arms are often referred to as “arms embargoes”, due to the fact that they usually aim to prohibit the export to, rather than the import from, a target of arms.

⁴ “Particular sanctions” may be distinguished from “targeted sanctions” and “smart sanctions”, as the former denotes the type of activity sanctioned, whereas the primary focus of the latter is upon the actors sanctioned. The two can overlap, however, as with diamond sanctions (“particular sanctions”) imposed against a rebel group (thus becoming “targeted sanctions”). The concepts of “targeted sanctions” and “smart sanctions” have been explored by an intergovernmental initiative designed to lead to the reform of sanctions practice. The initiative, sponsored in turn by the Swiss, German and Swedish Governments, has resulted in the convening of three series’ of workshops and conferences – in Interlaken, Bonn-Berlin and Stockholm, respectively – with the participation of diplomats, academics and United Nations and non-governmental practitioners. For reports arising from the Interlaken, Bonn-Berlin and Stockholm processes, see: *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern (“Final Report of Interlaken I”: available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>); *Second Interlaken Seminar on Targeting UN Financial Sanctions, 29-31 March 1999*, Swiss Federal Office for Foreign Economic Affairs, Bern (“Final Report of Interlaken II”: available on-line at: <http://www.smartsanctions.ch/Papers/I2/finrep.pdf>); *Targeted Financial Sanctions: A Manual for Design and Implementation. Contributions from the Interlaken Process* (2001) Thomas J. Watson Jr. Institute for International Studies, Providence, RI; *Design and Implementation of Arms Embargo and Travel Sanctions and Aviation-related Sanctions: Results of the Bonn-Berlin Process* (2001) Bonn International Center for Conversion, Bonn (available on-line at: http://www.bicc.de/events/unsanc/2000/pdf/booklet/booklet_sanctions.pdf); *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the ‘Bonn-Berlin Process’* (2001) Nomos, Baden-Baden; *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options. Results from the Stockholm Process*

7.1.1 Comprehensive economic sanctions

The term “comprehensive sanctions” is generally used to describe a sanctions régime that seeks to prevent the flow to and from a target of all commodities and products. Comprehensive sanctions régimes therefore effectively incorporate all of the forms of particular sanctions discussed below, as well as other particular prohibitions that have not been included below as they have not yet formed an explicit component of a sanctions régime. In practice, the Security Council has not applied any truly comprehensive sanctions régimes, as it has provided limited exemptions from each of the sanctions régimes imposed to date, generally for humanitarian purposes. Nevertheless, five sanctions régimes might be described as “comprehensive” sanctions régimes, including those against Southern

on the Implementation of Targeted Sanctions (2003) Uppsala University, Uppsala (available on-line at: <http://www.smartsanctions.se/reports/Final%20report%complete.pdf>).

Rhodesia,⁵ Iraq,⁶ the Federal Republic of Yugoslavia (Serbia-Montenegro),⁷ the Bosnian Serbs⁸ and Haiti.⁹

i. Humanitarian exemptions from comprehensive sanctions

The Security Council has exempted from each of its comprehensive sanctions régimes the export to the target of some humanitarian supplies. In outlining exempt supplies,

⁵ The sanctions against Southern Rhodesia were not initially comprehensive, as they targeted the import from Southern Rhodesia of key Southern Rhodesian exports and the export to Southern Rhodesia of arms and related *matériel*, aircraft and motor vehicles and associated parts, and oil and oil products: S/RES/232 (16 December 1966), operative paragraph 2. The sanctions became comprehensive, however, seventeen months later: S/RES/253 (29 May 1968), operative paragraph 3.

⁶ The sanctions against Iraq were comprehensive from the time of their application until May 2003. See: S/RES/661 (6 August 1990), operative paragraph 3; S/RES/687 (3 April 1991), operative paragraphs 20 (deciding implicitly that the comprehensive sanctions and financial sanctions imposed by resolution 661 (1990) would continue, by explicitly noting the types of commodities and products to which those prohibitions would no longer apply. For further details relating to those exemptions, see the section below), 22 (deciding that the comprehensive and financial sanctions would have no further force or effect once Iraq had complied with the disarmament requirements of resolution 687 (1991)); S/RES/1483 (22 May 2003), operative paragraph 10 (terminating all sanctions except the arms sanctions).

⁷ The sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) were intended to be comprehensive from the time of their initial application, however one of the exemptions provided from the sanctions was for transshipments via the Danube. Due to the wide abuse of those transshipments by the Federal Republic of Yugoslavia (Serbia-Montenegro), the Council subsequently tightened, then abolished the use of transshipments, making the sanctions more “comprehensive”. For the relevant decisions, see: S/RES/757 (30 May 1992), operative paragraph 4; S/RES/787 (16 November 1992), operative paragraph 9; S/RES/820 (17 April 1993), operative paragraph 15.

⁸ The sanctions régime against the Bosnian Serbs was comprehensive from the moment it was applied. The Council required States to prevent the import to, export from, and transshipment through areas under the control of the Bosnian Serb forces, of commodities and products other than essential humanitarian supplies: S/RES/820 (17 April 1993), operative paragraph 12. Interestingly, the Council did not explicitly articulate the items for which import to, export from and transshipment through the areas of Bosnia and Herzegovina under the control of Bosnian Serb forces would be prohibited – neglecting even to mention a word such as “commodities”, “products”, “goods” or “supplies”. It is likely, however, given the context of the prohibition and considering the Council’s past practice, that the intention was to prohibit the flow to and from the Bosnian Serbs of products and commodities. Another indicator that the sanctions were intended to be comprehensive was that the Council specified that exemptions would be permitted from the sanctions for “essential humanitarian supplies including medical supplies and foodstuffs distributed by humanitarian agencies”, provided that such exemptions were authorised by the Government of the Republic of Bosnia and Herzegovina: see also operative paragraph 12.

⁹ The Haiti sanctions régime initially consisted of an arms embargo, a petroleum embargo and financial sanctions: S/RES/841 (16 June 1993), operative paragraphs 5, 8. The Council applied

the Council has both articulated particular exempt items and identified classes of supplies that may be exempt with the approval of the relevant Sanctions Committee. Among the particular items which the Council has exempted from comprehensive sanctions régimes by the Council are: medical supplies (all comprehensive sanctions régimes),¹⁰ educational equipment and material (Southern Rhodesia),¹¹ informational materials (Southern Rhodesia and Haiti),¹² foodstuffs (all comprehensive sanctions régimes),¹³ petroleum and petroleum

comprehensive sanctions eleven months later: S/RES/917 (6 May 1994), operative paragraphs 6, 7.

¹⁰ In connection with Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 3(d) (exempting “supplies intended strictly for medical purposes”). In connection with Iraq, see: S/RES/661 (6 August 1990), operative paragraph 3(c). In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 4(c) (exempting “supplies intended strictly for medical purposes”). In connection with the Bosnian Serbs, see: S/RES/820 (17 April 1993), operative paragraph 12 (exempting “medical supplies” without qualification). Such exemptions were subject to the proviso, however, that they had been authorised by the Government of the Republic of Bosnia and Herzegovina. In relation to the sanctions régime against Haiti, see: S/RES/917 (6 May 1994), operative paragraph 7(a) (exempting “supplies intended strictly for medical purposes”).

In comprehensive sanctions régimes other than that against Iraq, the exemption against medical supplies has generally operated without controversy. In the case of the Iraq sanctions régime, however, the ability of Iraq to import medical supplies was restricted by the Iraq Sanctions Committee’s application of the “no dual-use requirement”, which meant that medical and other exempted supplies could not be exported to Iraq where they had potential for diversion or conversion to military use. For further discussion of this matter, see the case-study of the Iraq sanctions régime in Chapter 7, below.

¹¹ S/RES/253 (29 May 1968), operative paragraph 3(d) (exempting “educational equipment and material for use in schools and other educational institutions”).

¹² In connection with Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 3(d) (exempting “publications” and “new material”). In relation to Haiti, see: S/RES/917 (6 May 1994), operative paragraph 8 (exempting “informational materials, including books and other publications, needed for the free flow of information”).

¹³ While foodstuffs have been exempted from each comprehensive sanctions régime to date, the operation of the exemption has varied. In the case of the two earliest comprehensive sanctions régimes, the export to the target of foodstuffs was contingent upon the existence of “humanitarian circumstances”. With respect to Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 3(d) (exempting foodstuffs from the Southern Rhodesian sanctions régime “in special humanitarian circumstances”). In connection with Iraq, see: S/RES/661 (6 August 1990), operative paragraph 3(c) (exempting foodstuffs from the Iraq sanctions régime “in humanitarian circumstances”). In the Iraq instance, the Council delegated to the Iraq Sanctions Committee the responsibility for determining whether humanitarian circumstances existed: S/RES/666 (13 September 1990), operative paragraphs 1, 5. After the conclusion of Gulf War hostilities, the Secretary-General commissioned a report to ascertain whether “humanitarian circumstances” did in fact exist. That report concluded that humanitarian circumstances did exist and warned that the Iraqi people might soon face a “catastrophe”, including “epidemic and famine” if “massive life-supporting needs” were not met: S/22366 (20

products (Haiti);¹⁴ and clothing (the Federal Republic of Yugoslavia (Serbia-Montenegro)).¹⁵

Among the classes of items that have been exempted by the Council are: “materials and supplies essential for civilian need” (Iraq),¹⁶ and “commodities and products for essential humanitarian need” (the Federal Republic of Yugoslavia (Serbia-Montenegro), the Bosnian Serbs and Haiti).¹⁷ As a general rule, where the Security Council specifies particular exempt items, those items may be exported to the target with simple notification to the

March 1991), annex: *Report to the Secretary-General on humanitarian needs in Kuwait and Iraq in the immediate post-crisis environment by a mission to the area led by Mr. Martti Ahtisaari* (the “Ahtisaari report”), paragraph 37. The Iraq Sanctions Committee considered the Ahtisaari report, decided that humanitarian circumstances did in fact exist and communicated its decision to the Security Council, thus permitting States to export foodstuffs to Iraq upon simple notification to the Committee that such exports were to take place: S/22400 (22 March 1991): *Note by the Secretary-General*, annex (containing a letter from the President of the Security Council to the Secretary-General, informing the Secretary-General that the Iraq Sanctions Committee had taken the decision during its 36th meeting). The Security Council soon endorsed the Committee’s decision: S/RES/687 (3 April 1991), operative paragraph 20. In the three latter comprehensive sanctions régimes, by contrast, foodstuffs were exempted without qualification. For the Federal Republic of Yugoslavia (Serbia-Montenegro), the Bosnian Serbs and Haiti. In the three subsequent comprehensive sanctions régimes, the Council has exempted foodstuffs without qualification. With respect to the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 4(c). In connection with the Bosnian Serbs, see: S/RES/820 (17 April 1993), operative paragraph 12. With respect to Haiti, see: S/RES/917 (6 May 1994), operative paragraph 7(a).

¹⁴ S/RES/917 (6 May 1994), operative paragraph 7(c) and (d) (exempting such items when authorized by the Haiti Sanctions Committee or requested by the President and Prime Minister of Haiti and approved by the Haiti Sanctions Committee).

¹⁵ S/RES/943 (23 September 1994), operative paragraph 3 (exempting “clothing for essential humanitarian need”). It subsequently reaffirmed that exemption in S/RES/970 (12 January 1995), operative paragraph 5, and S/RES/988 (21 April 1995), operative paragraphs 13, 15.

¹⁶ S/RES/687 (8 April 1991), operative paragraph 20 (exempting from the Iraq sanctions régime “materials and supplies considered essential for civilian needs”).

¹⁷ In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/760 (18 June 1992), sole operative paragraph (exempting from the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro) “commodities and products for essential humanitarian need”). With respect to the Bosnian Serbs, see: S/RES/942 (23 September 1994), operative paragraph 7(b) (“products for essential humanitarian needs”, when approved by the 724 Committee). In connection with Haiti, see: S/RES/917 (6 May 1994), operative paragraph 7(b) (“commodities and products for essential humanitarian needs”, as approved by the Haiti Sanctions Committee under the no-objection procedure).

relevant Sanctions Committee.¹⁸ Where the Council identifies a class of supplies that are exempt, however, exports of items potentially falling within that class must be approved or authorized by the relevant Sanctions Committee before they may proceed.¹⁹

ii. Other exemptions from comprehensive sanctions

In addition to humanitarian exemptions, the Council has also provided for certain other exemptions from comprehensive sanctions régimes. In the case of the sanctions régime against Iraq, the Security Council permitted Iraq to export limited amounts of oil in order to enable it to finance the purchase of exempt commodities and products and the payment of reparations for liabilities arising from the Gulf War.²⁰ In the case of the sanctions regime

¹⁸ One exception to this rule was the exemption from the Haiti sanctions régime for petroleum and petroleum products. In that instance, the Council stipulated that such exemptions would be provided on an exceptional, case-by-case basis under a no-objection procedure: S/RES/841 (16 June 1993), operative paragraph 7.

¹⁹ For discussion of the responsibilities bestowed upon the Sanctions Committees with respect to determining the application of such exemptions, see Chapter 9, section 9.1.2.

²⁰ The program established to implement that exemption became known as the "Oil-for-Food Programme". It is beyond the scope of this section to explore in depth the details of the Oil-for-Food Programme. For further details, see the case-study on the Iraq sanctions régime in Chapter 7, below. For the decision establishing the Oil-for-Food Programme, see: S/RES/986 (14 April 1995), operative paragraphs 1, 2, 7, 8, 9, 10. In addition to financing the purchase by the Iraqi Government of medicine, health supplies, foodstuffs and supplies for essential civilian needs [S/RES/986 (14 April 1995), operative paragraph 8(a)], the Council decided that the proceeds from the sale of oil would fund: (a) the distribution of humanitarian relief to the three northern governorates not under the complete control of the Iraqi Government [S/RES/986 (14 April 1995), operative paragraph 8(b)]; (b) the Compensation Fund established to address claims for Iraqi reparations arising from the Gulf War [S/RES/986 (14 April 1995), operative paragraph 8(c)]; (c) the costs of on-the-ground inspection and auditing of the implementation in Iraq of the OFFP [S/RES/986 (14 April 1995), operative paragraph 8(d)]; (d) the operating costs of UNSCOM [S/RES/986 (14 April 1995), operative paragraph 8(e)]; (e) reasonable expenses incurred in order to export the permitted oil from Iraq [S/RES/986 (14 April 1995), operative paragraph 8(f)]; and (f) to replenish the accounts of frozen Iraqi assets from which funds had been transferred to the escrow account established under resolution 687 (1991) in order to cover the costs of the Compensation Commission and UNSCOM under resolution 778 (1992) [S/RES/986 (14 April 1995), operative paragraph 8(g)].

The Security Council had attempted to establish an earlier version of the OFFP in 1991 [see S/RES/706 (15 August 1991); S/RES/712 (19 September 1991)], but it had not been possible to implement the programme in the absence of cooperation from the Iraqi Government. In order to ensure an alternative source of funding for the activities of the Compensation Commission and UNSCOM, the Council had then adopted resolution 778 (1992), requiring States in which funds belonging to Iraq had been frozen in accordance with the sanctions régime to transfer those

imposed against the Federal Republic of Yugoslavia (Serbia-Montenegro) to address the situation in Bosnia-Herzegovina, exemptions were provided initially for transshipments through Serbia-Montenegro of commodities and products.²¹ The Council also provided for subsequent, temporary exemptions from that sanctions régime for the export of anti-serum for diphtheria,²² and for activities connected with repairs to river locks on the Danube.²³ Finally, in relation to the sanctions regime against Haiti, the Security Council exempted equipment for journalists.²⁴

funds temporarily to the escrow account established to fund, *inter alia*, the activities of the Commissions: see resolution 778 (1992) (2 October 1992).

²¹ S/RES/757 (30 May 1992), operative paragraph 6. Such transshipments nevertheless required the approval of the 724 Committee. Due to the fact that a number of violations of the sanctions régime resulted from abuses of the permitted transshipments, however, the Council subsequently restricted, then prohibited, such transshipments. See: S/RES/787 (16 November 1992), operative paragraph 9 (prohibiting the transshipment through the Federal Republic of Yugoslavia (Serbia and Montenegro) of particular products and commodities, including crude oil, petroleum products, coal, energy-related equipment, iron, steel, other metals, chemicals, rubber, tyres, vehicles, aircraft and motors of all types); S/RES/820 (17 April 1993), operative paragraph 15 (prohibiting all transshipments through the Federal Republic of Yugoslavia (Serbia and Montenegro)). In that operative paragraph the Council nevertheless provided for the possibility that transshipments could still be exempt if specifically authorised by the 724 Committee and so long as they were subject to effective monitoring as they passed along the Danube.

²² S/RES/967 (14 December 1994), operative paragraph 1. This exemption was recommended by the 724 Committee: see S/1996/946 (15 November 1996), annex: *Final Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia*, (hereafter "*Final Report of the 724 Committee*"), paragraph 16(g). The Council permitted the export of the serum for a limited period of 30 days in order to address a shortfall of the serum in places other than the Federal Republic of Yugoslavia (Serbia and Montenegro). In permitting the export of the serum the Council stipulated that payment for the serum could only be paid into frozen accounts of the Federal Republic of Yugoslavia (Serbia and Montenegro): *ibid*, operative paragraph 2.

²³ S/RES/992 (11 May 1995), operative paragraph 1 (providing an exemption for the use of Rumanian river locks by vessels registered in or owned by a person or entity from the Federal Republic of Yugoslavia (Serbia and Montenegro) while locks on the Serbian bank of the Danube were undergoing repair), operative paragraph 2 (exempting supplies essential to those repairs).

²⁴ S/RES/917 (6 May 1994), operative paragraph 8. The Council provided, however, that the conditions and terms regulating the operation of this exemption would be determined by the Haiti Sanctions Committee

7.1.2 Particular economic sanctions

Discussion here does not consider every potential form of particular economic sanctions, as such a list could potentially be almost limitless. Rather, it considers those types of particular sanctions that have already been employed by the Security Council in one or more of its sanctions régimes. The most common form of particular economic sanctions applied by the Security Council has been arms sanctions, but the Security Council has also employed particular economic sanctions to prevent the flow to or from targets of petroleum, asbestos, forms of transport, diamonds, chemicals and timber products.

i. Arms sanctions

Arms sanctions have been the most frequently applied form of particular sanctions, with every sanctions régime except the one against Sudan incorporating prohibitions against arms at some stage of its development. Arms sanctions have featured as a part of eight sanctions régimes consisting solely of arms sanctions, including those against South Africa,²⁵ the former Yugoslavia,²⁶ Somalia,²⁷ Liberia in the first instance,²⁸ Rwanda,²⁹ Kosovo,³⁰ Ethiopia and Eritrea,³¹ and the DRC.³² Arms sanctions have also constituted one component of seven sanctions régimes that have also contained other types of sanctions, including those

²⁵ S/RES/418 (4 November 1977), operative paragraph 2. In operative paragraph 4 of that resolution, the Council also required all States to refrain from helping South Africa to develop nuclear weapons.

²⁶ S/RES/713 (25 September 1991), operative paragraph 6.

²⁷ S/RES/733 (23 January 1992), operative paragraph 5.

²⁸ S/RES/788 (19 November 1992), operative paragraph 8.

²⁹ See: S/RES/918 (17 May 1994), operative paragraph 13.

³⁰ See: S/RES/1160 (31 March 1998), operative paragraph 8.

³¹ See: S/RES/1298 (17 May 2000), operative paragraph 6.

³² See: S/RES/1493 (28 July 2003), operative paragraph 20.

against Southern Rhodesia (before the sanctions régime became comprehensive),³³ Libya,³⁴ Haiti, (also before the sanctions régime became comprehensive),³⁵ UNITA,³⁶ Sierra Leone,³⁷ the Taliban and Al Qaida,³⁸ and Liberia in the second instance.³⁹ Finally, arms sanctions have also formed an implicit part of each of the five comprehensive sanctions régimes applied to date.⁴⁰ In the case of Iraq, arms sanctions formed an explicit component of the sanctions régime after the conclusion of the Gulf War, with the Security Council's attention being focused on the question of Iraq's possession of weapons of mass destruction.⁴¹ Arms sanctions were also maintained against Iraq after the other sanctions had been terminated.⁴²

The Security Council has employed a number of formulations in outlining the scope of arms sanctions to be applied. In the first case of U.N. sanctions, against Southern Rhodesia, the Council required States Members of the United Nations to prevent the sale or shipment to Southern Rhodesia of "arms, ammunition of all types, military aircraft, military

³³ S/RES/232 (16 December 1966), operative paragraph 2(d).

³⁴ S/RES/748 (31 March 1992), operative paragraph 5.

³⁵ S/RES/841 (16 June 1993), operative paragraph 5.

³⁶ S/RES/864 (15 September 1993), operative paragraph 19.

³⁷ S/RES/1132 (8 October 1997), operative paragraph 6; S/RES/1171 (5 June 1998), operative paragraph 2.

³⁸ The sanctions régime against the Taliban did not initially prohibit the supply of arms. Rather, it consisted of non-economic sanctions, including aviation and financial sanctions: S/RES/1267 (15 October 1999), operative paragraph 4. Little more than a year after the sanctions régime was initiated, however, arms became contraband: S/RES/1333 (19 December 2000), operative paragraph 5. The arms sanctions were subsequently reaffirmed and extended to cover the sale or supply of arms and related *matériel* to Usama Bin Laden, Al Qaida and their associates: see S/RES/1390 (16 January 2002), operative paragraph 2(c).

³⁹ S/RES/1343 (7 March 2001), operative paragraph 5.

⁴⁰ As noted above, five sanctions régimes have been comprehensive, including those against Southern Rhodesia, Iraq, the Federal Republic of Yugoslavia (Serbia-Montenegro), the Bosnian Serbs and Haiti.

⁴¹ For the provision outlining all of the specific arms sanctions against Iraq, see: S/RES/687 (3 April 1991), operative paragraph 24.

vehicles, and equipment and of arms and ammunition”.⁴³ In three other cases, the Council has required States to implement “a general and complete embargo on all deliveries of weapons and military equipment” to the target.⁴⁴ In the majority of cases, however, the Council has required States to prevent the sale or supply to the target of “arms and related *matériel*”.⁴⁵

The Council first used the phrase “arms and related *matériel*” in relation to the sanctions régime against South Africa, when it noted that the phrase included “weapons, ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for all of those articles”.⁴⁶ That elaboration has provided the basis for a fairly standard interpretation of the phrase, with some minor variations.⁴⁷ On some occasions, however, the

⁴² S/RES/1483 (22 May 2003), operative paragraph 10. Exempt from the continuing arms sanctions, however, were arms and related matériel for the Coalition Authority.

⁴³ S/RES/232 (16 December 1966), operative paragraph 2(d).

⁴⁴ The Council used this phrase in respect of the sanctions against the former Yugoslavia [S/RES/713 (25 September 1991), operative paragraph 6], Somalia [S/RES/733 (23 January 1992), operative paragraph 5], and Liberia in the first instance [S/RES/788 (19 November 1992), operative paragraph 8].

⁴⁵ The phrase “arms and related *matériel*” has been used by the Council in the application of arms sanctions against: South Africa, Iraq, Libya, Haiti, UNITA, Rwanda, Sierra Leone, the Federal Republic of Yugoslavia to address the situation in Kosovo, the Taliban, Usama Bin Laden and Al Qaida, Ethiopia and Eritrea, Liberia (in the second instance), and the DRC. For the specific provisions in which the phrase was located, see the notes that follow.

Interestingly, there has been a subtle difference in the precise form of the word used by the Council to refer to “*matériel*”. In the régimes against South Africa, Iraq, Haiti, UNITA, Rwanda, Sierra Leone and the Federal Republic of Yugoslavia, the Council used the French “*matériel*”. In the régime against Libya the Council used the English “material”. In the more recent régimes, against Ethiopia and Eritrea, Liberia, and certain actors in the DRC, the Council has used a hybrid form, “materiel”.

⁴⁶ S/RES/418 (4 November 1977), operative paragraph 2.

⁴⁷ For the use of the phrase in the sanctions régime against Haiti, see: S/RES/841 (16 June 1993), operative paragraph 5 (defining the phrase as including “weapons and ammunition, military vehicles and equipment, police equipment and spare parts for the aforementioned”). For its use in the sanctions régime against UNITA, see: S/RES/864 (15 September 1993), operative paragraph 19 (defining the phrase as including “weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned”). For its use in the sanctions régime against Rwanda, see: S/RES/918 (17 May 1994), operative paragraph 13 (defining the phrase as including “weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts”). For its use in the sanctions régime against Sierra Leone, see: S/RES/1132 (8 October 1997), operative paragraph 6 (defining the phrase as including

Council has provided a quite different interpretation of the phrase,⁴⁸ or has not elaborated at all on its meaning.⁴⁹ The Council has also clarified that, in addition to the standard interpretation of the phrase, it can also encompass “nuclear, strategic and conventional weapons”,⁵⁰ and “the provision of any types of equipment, supplies and grants of licensing arrangements, for the manufacture or maintenance of [items encompassed by the phrase arms and related *matériel*]”.⁵¹

In its oversight of the various sanctions régimes incorporating arms sanctions, the Council has made it clear that the obligations imposed by arms sanctions can extend beyond the requirement to prevent the flow to a target of arms and related *matériel*. In the case of Rwanda, the Council clarified that the arms sanctions required all States to prevent the sale

“weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned”); S/RES/1171 (5 June 1998), operative paragraph 2. For its use in the sanctions régime against the Federal Republic of Yugoslavia to address the situation in Kosovo, see: S/RES/1160 (31 March 1998), operative paragraph 8 (defining the phrase as including “weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned”). For its use in the sanctions régime against the Taliban, Usama Bin Laden and Al Qaida, see: S/RES/1333 (19 December 2000), operative paragraph 5; S/RES/1390 (16 January 2002), operative paragraph 2(c) (each defining the phrase as including “weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned”). For its use in the sanctions régime against Ethiopia and Eritrea, see: S/RES/1298 (17 May 2000), operative paragraph 6 (defining the phrase as including “weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned”). For its use in the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 5 (defining the phrase as including “weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned”).

⁴⁸ In the case of Iraq, the Council noted that the phrase included “conventional military equipment, including for paramilitary forces, and spare parts and components and their means of production”: S/RES/687 (3 April 1991), operative paragraph 24(a).

⁴⁹ This occurred in the case of the sanctions against certain actors in the DRC. See: S/RES/1493 (28 July 2003), operative paragraph 20 (using the phrase “arms and related *matériel*” without defining what it meant).

⁵⁰ In the case of South Africa, the Council clarified that the phrase included “in addition to all nuclear, strategic and conventional weapons, all military, paramilitary police vehicles and equipment, as well as spare parts for all of those items”: S/RES/591 (28 November 1986), operative paragraph 4.

⁵¹ In the case of Libya, the Council noted that the phrase included, in addition to the standard interpretation, “the provision of any types of equipment, supplies and grants of licensing

or supply of arms and related *matériel* to States neighbouring Rwanda, if they would be forwarded to non-Government actors in Rwanda.⁵² The Council has also required States to prevent the provision of assistance, advice or training in respect of the use, manufacture or maintenance of arms and related *matériel* to the target of the sanctions régimes against Somalia,⁵³ Libya,⁵⁴ the Federal Republic of Yugoslavia to address the situation in Kosovo,⁵⁵ the Taliban and Al Qaida,⁵⁶ Ethiopia and Eritrea,⁵⁷ Liberia (in the second instance),⁵⁸ and certain parties in the DRC.⁵⁹ Moreover, in the case of Somalia the Council has clarified that the application of arms sanctions can require the prohibition of financing of acquisitions and

arrangements, for the manufacture or maintenance of the aforementioned”: S/RES/748 (31 March 1992), operative paragraph 5(a).

⁵² S/RES/997 (9 June 1995), operative paragraph 4. The Council reaffirmed this provision in S/RES/1011 (16 August 1995), operative paragraph 9.

⁵³ S/RES/1425 (22 July 2002), operative paragraph 2 (prohibiting the provision to Somalia of technical advice, financial and other assistance, and training related to military activities). For discussion of the manner in which this provision first introduced the possibility that financial activities might be prohibited under arms sanctions, see below.

⁵⁴ S/RES/748 (31 March 1992), operative paragraph 5(b), 5(c) (prohibiting the provision to Libya of technical advice, assistance or training and requiring States to withdraw any officials or agents who were advising the Libyan authorities on military matters).

⁵⁵ S/RES/1160 (31 March 1998), operative paragraph 8 (prohibiting the arming and training of forces for terrorist activities in Kosovo).

⁵⁶ S/RES/1333 (19 December 2000), operative paragraph 5(b) (prohibiting the provision of technical advice, assistance or training in connection with the military activities of the Taliban); S/RES/1390 (16 January 2002), operative paragraph 2(c) (prohibiting the provision of technical advice, assistance or training in connection with the military activities of the Taliban, Usama Bin Laden, Al Qaida and their associates).

⁵⁷ S/RES/1298 (17 May 2000), operative paragraph 6(b) (prohibiting the provision to Ethiopia and Eritrea of technical advice, assistance or training related to the provision, manufacture, maintenance or use of arms and related *matériel*).

⁵⁸ S/RES/1343 (7 March 2001), operative paragraph 5(b) (prohibiting the provision to Liberia of technical advice, assistance or training related to the provision, manufacture, maintenance or use of arms and related *matériel*).

⁵⁹ S/RES/1493 (28 July 2003), operative paragraph 20 (prohibiting the provision to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement, of any assistance, advice or training related to military activities).

deliveries of weapons and military equipment,⁶⁰ as well as the provision of financial assistance related to military activities.⁶¹

Exemptions from arms sanctions

The Council has provided exemptions from arms sanctions in a number of sanctions régimes. Where the Council provides such exemptions, the export of arms and related *matériel* can generally proceed upon simple notification to the relevant Sanctions Committee. Exemptions have been provided in the following situations: (a) for the supply of necessary items to United Nations or international peace-keeping forces or international civilian police forces (the former Yugoslavia, Somalia, Liberia (in the first instance), Rwanda, Sierra Leone, the Federal Republic of Yugoslavia to address the situation in Kosovo, Ethiopia and Eritrea, and certain actors in the DRC);⁶² (b) for protective clothing for United

⁶⁰ S/RES/1425 (22 July 2002), operative paragraph 1.

⁶¹ S/RES/1425 (22 July 2002), operative paragraph 2.

⁶² In connection with the former Yugoslavia, see: S/RES/743 (21 February 1992), operative paragraph 2 (exempting weapons and military equipment destined for the sole use of the United Nations Protection Force (UNPROFOR)); S/RES/1031 (15 December 1995), operative paragraph 22 (exempting weapons and military equipment destined for the sole use of the Member States participating in the Multinational Implementation Force (IFOR), or for international police forces). In connection with Somalia, the Council initially elaborated no explicit exemptions from the embargo: see S/RES/733 (23 January 1992), operative paragraph 5. It is likely, however, that the Council's authorization of the establishment of the United Nations Operation in Somalia (UNOSOM) and its successor the United Nations Operation in Somalia II (UNOSOM II), as well as of the United Task Force (UNITAF), each of which comprised significant military components and were endowed with a mandate under Chapter VII of the Charter of the United Nations, amounted to an implicit exemption from the embargo for those entities and their activities. For the purposes of identifying an implicit exemption from the arms embargo for UNOSOM and UNITAF, the provisions of resolution 794 (1992) are significant. It is noteworthy that the endowment of those operations with a Chapter VII mandate to use necessary measures to establish a secure environment for humanitarian activities [see, e.g., S/RES/794 (3 December 1992), operative paragraphs 6, 7, 8, 10, 11, 12, 13, 15] is located in the same resolution in which the Council calls upon States, acting nationally or through regional agencies or arrangements, to use such measures as may be necessary to ensure the strict implementation of the arms sanctions [see S/RES/794 (3 December 1992), operative paragraph 16]. It is highly unlikely that the Council would have endowed those operations with such a robust Chapter VII mandate without also intending that they would be exempt from the arms sanctions. In connection with Liberia (in the first instance), see: S/RES/788 (19 November 1992), operative paragraph 9 (exempting from the first Liberian sanctions régime weapons and military equipment destined for the sole use of the peace-keeping forces of the Economic Community

Nations, media and humanitarian personnel (Somalia, the Taliban/Al Qaida and Liberia (in the second instance));⁶³ (c) for non-lethal military equipment for humanitarian or protective use (Somalia, the Taliban/Al Qaida, Ethiopia and Eritrea, Liberia (in the second instance), and the DRC);⁶⁴ (d) where requested by an exiled democratic Government (Haiti);⁶⁵ (e) for

of West African States (ECOWAS)). That exemption was subsequently reaffirmed in S/RES/813 (26 March 1993), operative paragraph 13. In connection with Rwanda, see: S/RES/918 (17 May 1994), operative paragraph 16 (exempting from the arms sanctions activities related to the United Nations Assistance Mission for Rwanda (UNAMIR) and the United Nations Observer Mission Uganda-Rwanda (UNAMUR)). In connection with Sierra Leone, see: S/RES/1171 (5 June 1998), operative paragraph 3 (exempting the arms and related *matériel* for the use of the Military Observer Group of the Economic Community of West African States (ECOMOG)); S/RES/1299 (19 May 2000), operative paragraph 3 (exempting arms and related *matériel* for the use in Sierra Leone of Member States cooperating with the United Nations Assistance Mission in Sierra Leone (UNAMSIL) and with the Government of Sierra Leone). In connection with the Federal Republic of Yugoslavia, see: S/RES/1203 (24 October 1998), operative paragraph 15 (exempting equipment for the use of the OSCE and NATO verification missions); S/RES/1244 (10 June 1999), operative paragraph 16 (exempting equipment for the use of the international civil and security presences – which subsequently evolved into UNMIK and KFOR). In connection with Ethiopia and Eritrea, see: S/RES/1320 (15 September 2000), operative paragraph 10 (exempting arms and related *matériel* for the sole use in Ethiopia or Eritrea of the United Nations). In connection with certain actors in the DRC, see: S/RES/1493 (28 July 2003), operative paragraph 21 (exempting supplies to MONUC and the Interim Emergency Multinational Force led by France).

⁶³ In connection with Somalia, see: S/RES/1356 (19 June 2001), operative paragraph 2 (exempting protective clothing exported to Somalia for the personal use of United Nations personnel, representatives of the media and humanitarian and development workers). In connection with the Taliban & Al Qaida, see: S/RES/1333 (19 December 2000), operative paragraph 6 (exempting protective clothing for the personal use of United Nations personnel, representatives of the media, and humanitarian workers). In connection with Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 5(d) (exempting protective clothing for the personal use of United Nations personnel, media representatives, and humanitarian and development workers).

⁶⁴ In connection with Somalia, see: S/RES/1356 (19 June 2001), operative paragraph 3 (exempting supplies of non-lethal military equipment intended solely for humanitarian or protective use). Such exemptions required the prior approval of the Somalia Sanctions Committee, however: S/RES/1356 (19 June 2001), operative paragraph 4. In connection with the Taliban and Al Qaida, see: S/RES/1333 (19 December 2000), operative paragraph 6 (exempting non-lethal supplies intended for humanitarian use, as approved by the 1267 Committee). In connection with Ethiopia and Eritrea, see: S/RES/1298 (17 May 2000), operative paragraph 7 (exempting supplies of non-lethal military equipment intended solely for humanitarian use, as approved in advance by the Ethiopia and Eritrea Sanctions Committee). In connection with Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraphs 5(c) (exempting non-lethal military equipment intended solely for humanitarian or protective use, as approved by the 1343 Committee). In connection with certain actors in the DRC, see: S/RES/1493 (28 July 2003), operative paragraph 21 (exempting non-lethal military equipment intended for humanitarian or protective use, as well as related technical assistance and training). In order to be exempt, such training and assistance must be notified in advance to the Secretary-General and his Special Representative.

arms and related *matériel* destined for the use of a legitimate Government (UNITA, Rwanda, and Sierra Leone);⁶⁶ and (f) for equipment and supplies connected to demining programmes (Rwanda, and Ethiopia and Eritrea).⁶⁷

ii. *Sanctions against weapons of mass destruction*

In addition to targeting arms in general, the Council has also taken specific action to target weapons of mass destruction. As noted above, in the case of South Africa the Council clarified that the phrase “arms and related *matériel*” can encompass nuclear, strategic and conventional weapons.⁶⁸ In the case of Iraq, although the comprehensive sanctions imposed against that country in theory should have prevented the flow to or from Iraq of any goods other than a limited group of humanitarian exemptions, after the Gulf War the Council clarified in some detail the manner in which the sanctions prohibited the

⁶⁵ S/RES/873 (13 October 1993), operative paragraph 3 (providing that exemptions could be granted from the arms sanctions against Haiti if approved by the Haiti Sanctions Committee, on a case-by-case basis, under the no-objection procedure in response to a request by President Aristide or Prime Minister Malval).

⁶⁶ In connection with UNITA, see: S/RES/864 (15 September 1993), operative paragraph 19 (preventing the sale or supply to Angola, other than through points of entry to be designated by the Government of Angola, of arms and related *matériel* and military assistance. In connection with Rwanda, see: S/RES/1011 (16 August 1995), operative paragraph 7 (exempting the sale or supply of arms and related *matériel* to the Rwandan Government via specified entry points until 1 September 1996), operative paragraph 8 (exempting the sale or supply to the Rwandan Government of arms and related *matériel* in general from 1 September 1996). In connection with Sierra Leone, see: S/RES/1171 (5 June 1998), operative paragraph 2 (exempting the supply of arms and related *matériel* to the Government of Sierra Leone through named points of entry).

⁶⁷ In connection with against Rwanda, see: S/RES/1005 (17 July 1995), sole operative paragraph (exempting explosives to be used for the purpose of demining, when authorized by the Rwanda Sanctions Committee). In connection with Ethiopia and Eritrea, see: S/RES/1312 (31 July 2000), operative paragraph 5 (exempting equipment and related *matériel* for the use of the United Nations Mine Action Service, as well as the provision of related technical assistance and training by that Service); S/RES/1320 (15 September 2000), operative paragraph 10 (exempting equipment and related *matériel*, including technical assistance and training, for use solely for demining within Ethiopia or Eritrea under the auspices of the United Nations Mine Action Service).

⁶⁸ In the case of South Africa, the Council clarified that the phrase included “in addition to all nuclear, strategic and conventional weapons, all military, paramilitary police vehicles and

possession and acquisition of weapons of mass destruction by Iraq. Thus, the Council noted that, in order to ensure that Iraq did not increase its capacity to re-arm, States were required to continue to prevent the sale, supply or provision to Iraq of: (a) Arms and related *matériel*;⁶⁹ (b) Items relating to chemical and biological weapons, ballistic missiles with a range greater than one hundred and fifty kilometres, and nuclear weapons;⁷⁰ (c) Technology relating to arms and related material, chemical and biological weapons, ballistic missiles with a range greater than one hundred and fifty kilometres, and nuclear weapons;⁷¹ and (d) Personnel or training or technical support services relating to arms and related material, chemical and biological weapons, ballistic missiles with a range greater than one hundred and fifty kilometres, and nuclear weapons.⁷²

iii. Petroleum sanctions

Petroleum sanctions consist of a prohibition upon the export to or import from a target of petroleum and petroleum products. The Council has imposed petroleum sanctions on four occasions, as part of its sanctions régimes against Southern Rhodesia,⁷³ Haiti,⁷⁴ UNITA⁷⁵ and Sierra Leone.⁷⁶ In the case of Libya, while the Council did not impose

equipment, as well as spare parts for all of those items”: S/RES/591 (28 November 1986), operative paragraph 4.

⁶⁹ S/RES/687 (3 April 1991), operative paragraph 24(a).

⁷⁰ S/RES/687 (3 April 1991), operative paragraph 24(b).

⁷¹ S/RES/687 (3 April 1991), operative paragraph 24(c).

⁷² S/RES/687 (3 April 1991), operative paragraph 24(d).

⁷³ S/RES/232 (16 December 1966), operative paragraph 2 (f). The petroleum sanctions were part of the Southern Rhodesian sanctions régime before it became comprehensive.

⁷⁴ S/RES/841 (16 June 1993), operative paragraph 5. The petroleum sanctions were part of the Haiti sanctions régime before it became comprehensive.

⁷⁵ S/RES/864 (15 September 1993), operative paragraph 19.

⁷⁶ S/RES/1132 (8 October 1997), operative paragraph 6. The petroleum sanctions were terminated in March 1998, however, upon the return to power of the democratically-elected Government: S/RES/1156 (16 March 1998), operative paragraph 2.

petroleum sanctions as such, it nevertheless imposed sanctions against the export to Libya of particular items used in the refinement and export of petroleum and petroleum products.⁷⁷ Thus, it was indirectly seeking to impair the ability of Libya to export petroleum and petroleum products.

Exemptions from petroleum sanctions

Exemptions have been outlined from petroleum sanctions on three of the four occasions on which those measures have been employed. In the case of the sanctions against Haiti, an exemption was provided for non-commercial quantities of petroleum or petroleum products, including propane gas for cooking, for verified essential humanitarian needs.⁷⁸ In the case of the sanctions against UNITA, exemptions were provided for the sale or supply of petroleum and petroleum products to Angola, through points of entry designated by the Government of Angola.⁷⁹ In the case of the sanctions against Sierra Leone, the Council provided for the possibility of exemptions upon application to the Sierra Leone Sanctions Committee by the democratically-elected Government of Sierra Leone,⁸⁰ by other Governments or United Nations agencies for verified humanitarian purposes,⁸¹ and

⁷⁷ S/RES/883 (11 November 1993), operative paragraph 5. The prohibition upon particular goods used in the refinement and export of oil required States to prevent the export to Libya of goods such as pumps, boilers, furnaces, and prepared catalysts. For a full list of the items see the annex attached to resolution 883: S/RES/883 (11 November 1993), annex.

⁷⁸ S/RES/841 (16 June 1993), operative paragraph 7. This exemption would only apply, however, if authorized by the Haiti Sanctions Committee on an exceptional, case-by-case basis under a no-objection procedure, and in the event that such exemptions were granted they were subject to the proviso that arrangements were made for the effective monitoring of delivery and use of the exempted items.

⁷⁹ S/RES/864 (15 September 1993), operative paragraph 19.

⁸⁰ S/RES/1132 (8 October 1997), operative paragraph 7(a). Such applications could be authorized by the Sierra Leone Sanctions Committee, on a case-by-case basis and subject to a no-objection procedure.

⁸¹ S/RES/1132 (8 October 1997), operative paragraph 7(b). Such applications could be authorized by the Sierra Leone Sanctions Committee, on a case-by-case basis and subject to a no-objection procedure.

for the needs of the Monitoring Group of the Economic Community of West African States (ECOMOG).⁸²

iv. Asbestos, iron ore, sugar and leather sanctions

In the case of Southern Rhodesia, the Council imposed sanctions against the import from Southern Rhodesia of a number of that country's most important export products.⁸³

The list of contraband products included asbestos, iron ore, sugar and leather.⁸⁴

v. Sanctions against trade in forms of transport: aircraft, vehicle and watercraft sanctions

The Security Council has imposed sanctions against three forms of transport: aircraft, motor vehicles and watercraft.⁸⁵ In general, in imposing sanctions against forms of transport the Council has also prohibited trade in parts of those forms of transport. The Council has imposed aircraft sanctions,⁸⁶ prohibiting the export to a target of aircraft and aircraft parts, on three occasions, as part of its sanctions régimes against Southern Rhodesia,⁸⁷ Libya,⁸⁸ and UNITA.⁸⁹ The Council has imposed vehicle sanctions, preventing

⁸² S/RES/1132 (8 October 1997), operative paragraph 7(b). Such applications could be authorized by the Sierra Leone Sanctions Committee, on a case-by-case basis and subject to a no-objection procedure, and with the proviso that there be acceptable arrangements for effective monitoring of such deliveries.

⁸³ S/RES/232 (16 December 1966), operative paragraph 2(a).

⁸⁴ Also included in the list were chrome, pig-iron, tobacco, cooper, meat and meat products and hides and skin: see *ibid.*

⁸⁵ The forms of transport considered here are civilian. Trade in military or paramilitary transport is generally prohibited under arms sanctions. For further details, see the section above on arms sanctions.

⁸⁶ As used here, "aircraft sanctions" are to be distinguished from "aviation sanctions". The former prohibit trade with the target in aircraft or aircraft parts, whereas the latter seek to interrupt flights. As described below, aviation sanctions can be "external" in application, meaning that they aim to interrupt flights to and from a target, or they can be "internal" in application, in which case they aim to interrupt flights within the target.

⁸⁷ S/RES/232 (16 December 1966), operative paragraph 2 (e).

⁸⁸ S/RES/748 (31 March 1992), operative paragraph 4(b) (requiring States to prohibit the supply to Libya of any aircraft or aircraft components); S/RES/883 (11 November 1993), operative

the export to a target of vehicles and vehicle parts, on two occasions, as part of its sanctions régimes against Southern Rhodesia⁹⁰ and UNITA.⁹¹ Finally, the Council has imposed watercraft sanctions, prohibiting the export to a target of watercraft and watercraft parts, on one occasion, as part of its sanctions régime against and UNITA.⁹²

vi. Diamond sanctions

Diamond sanctions are measures that seek to prohibit the import from a diamond-producing target of diamonds. The Security Council has imposed diamond sanctions on three occasions, as part of its sanctions régimes against UNITA,⁹³ Sierra Leone⁹⁴ and Liberia.⁹⁵ The Council has also prohibited the export to targets of equipment or services connected with the extraction of diamonds in the cases of UNITA.⁹⁶

Exemptions from diamond sanctions

paragraph 6(c) (requiring States to prohibit the provision for operation within Libya of any aircraft, aircraft components, or engineering or servicing of aircraft and aircraft components).

⁸⁹ S/RES/1127 (28 August 1997), operative paragraph 4(d)(ii) (prohibiting the provision of aircraft or aircraft parts to Angola, other than through points of entry designated by the Angolan Government).

⁹⁰ S/RES/232 (16 December 1966), operative paragraph 2 (e).

⁹¹ S/RES/1173 (12 June 1998), operative paragraph 12(d).

⁹² S/RES/1173 (12 June 1998), operative paragraph 12(d).

⁹³ S/RES/1173 (12 June 1998), operative paragraph 12(b).

⁹⁴ S/RES/1306 (5 July 2000), operative paragraph 1. The diamond sanctions were initially imposed for a period of twelve months, but they were subsequently extended on two occasions, for periods of eighteen and six months: S/RES/1385 (19 December 2001), operative paragraph 3; S/RES/1446 (4 December 2002), operative paragraph 2. In June 2003, when the most recent period of extension expired, the members of the Council agreed not to renew the diamond sanctions, in light of the Government of Sierra Leone's increased efforts to manage its diamond industry and ensure proper control over diamond areas, and in light of its full participation in the Kimberley Process: SC/7778 (5 June 2003): *Press statement on the Sierra Leone Diamond Embargo by the President of the Security Council*. For discussion of the Council's use of time-limits in the application of sanctions, see Chapter 8, section 8.3.2.

⁹⁵ S/RES/1343 (7 March 2001), operative paragraph 6. As with the diamond sanctions against Sierra Leone, the diamond sanctions against Liberia were initially limited to twelve months, however they have since been extended for two additional periods of twelve months: see S/RES/1408 (6 May 2002), operative paragraph 5; S/RES/1478 (6 May 2003), operative paragraph 10.

⁹⁶ S/RES/1173 (12 June 1998), operative paragraph 12(c).

The Council has provided for the possibility of exemption from the diamond sanctions for the Governments of Sierra Leone and Liberia if they were to implement an effective Certificate-of-Origin régime to ensure that diamond exports were not being improperly used to finance conflict.⁹⁷ In the case of Sierra Leone, the Sierra Leone Government did in fact establish an effective Certificate-of-Origin régime, thus bringing the exemption into play.⁹⁸ In the case of Liberia, however, the Liberian Government has yet to establish an effective Certificate-of-Origin régime, thus leaving the exemption dormant.

vii. Chemical sanctions

The Security Council has imposed chemical sanctions on one occasion, as part of its sanctions régime against the Taliban, requiring States to prevent the sale to Taliban-controlled areas of the chemical acetic anhydride.⁹⁹

viii. Timber sanctions

Timber sanctions seek to prohibit the import from a timber-rich target of timber and timber products. The Security Council has experimented with timber sanctions on one

⁹⁷ In relation to Sierra Leone, see: S/RES/1306 (5 July 2000), operative paragraph 5. In relation to Liberia, see: S/RES/1408 (6 May 2002), operative paragraph 8; S/RES/1478 (6 May 2003), operative paragraph 14.

⁹⁸ The Sierra Leone Sanctions Committee decided, at its 21st meeting on 21 March 2001, that the new Certificate of Origin régime for the trade in Sierra Leone diamonds was in effective operation: see S/2000/966 (6 October 2000): *Letter dated 6 October 2000 from the Chairman of the Security Council Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone addressed to the President of the Security Council*; S/2001/300 (30 March 2001): *Letter dated 28 March 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone addressed to the President of the Security Council*. See also: S/2002/50 (14 January 2002), annex: *Report of the 1132 Committee for 2001*, paragraph 11. The Security Council welcomed the establishment and implementation of the Certificate of Origin régime in: S/RES/1385 (19 December 2001), operative paragraph 1.

⁹⁹ S/RES/1333 (19 December 2000), operative paragraph 10. Acetic anhydride is used in the production of opium. The Council therefore imposed sanctions against the export of that chemical to Taliban-controlled territory with the aim of restricting the ability of both the Taliban and terrorists to profit from the sale of illicit opium.

occasion, as part of its sanctions régime against Liberia (in the second instance).¹⁰⁰ In that instance, the Council required all States to prevent the import of all round logs and timber products originating in Liberia.¹⁰¹

7.1.3 Financial sanctions

Financial sanctions are measures seeking to interrupt the ability of the target to engage in financial relations with the external world. Financial sanctions can be general in nature, thus requiring States to freeze any financial resources or assets in their jurisdiction that belong to the target, or to prohibit the transfer of financial resources or assets, including the provision of insurance, to parties either located in the target or acting on behalf of parties located in the target. Financial sanctions have also been more targeted, however, seeking to freeze the personal financial resources and assets of key policy-makers connected with a target. The Security Council has employed general financial sanctions as part of its sanctions

¹⁰⁰ On a previous occasion, the Council had requested States to respect a moratorium outlined by Cambodia's Supreme National Council upon the export from Cambodia of logs: see S/RES/792 (30 November 1992), operative paragraph 12. As noted in section 1.2 of Chapter 1, the Cambodian instance does not represent an example of mandatory U.N. sanctions. Nevertheless, the measures requested in that case indicated a willingness on the part of the Council to focus upon timber products as the subject of a sanctions régime where appropriate.

¹⁰¹ S/RES/1478 (6 May 2003), operative paragraph 17. A year earlier the Council had foreshadowed the potential for the logging industry to be sanctioned, by calling upon the Liberian Government to demonstrate, including through the establishment of transparent and internationally verifiable audit régimes, that the revenue derived from its shipping and timber industries was being used for legitimate social, humanitarian and development and not for purposes that violated the objectives of the sanctions régime: S/RES/1408 (6 May 2002), operative paragraph 10. Before it eventually applied the logging sanctions, the Council noted that it considered that the audits commissioned by the Liberian Government did not demonstrate that the revenue derived from the shipping and timber industries was being used for legitimate social, humanitarian and development purposes, nor that it was not being used in violation of the sanctions: S/RES/1478 (6 May 2003), operative paragraph 16. This decision by the Council is interesting for two reasons. First, it suggests that if compliance with the objectives of the sanctions régime is not forthcoming from the Liberian Government, then the next area that is likely to be sanctioned is the shipping industry. Second, the Council's decision to apply sanctions on the basis that the Liberian Government had not demonstrated that its revenue was not being used to violate the sanctions might be interpreted to have followed a rationale of "guilty until proven innocent".

régimes against Southern Rhodesia,¹⁰² Iraq,¹⁰³ Libya,¹⁰⁴ Federal Republic of Yugoslavia (Serbia-Montenegro),¹⁰⁵ the Bosnian Serbs,¹⁰⁶ and Haiti.¹⁰⁷ In the case of the sanctions

¹⁰² S/RES/253 (29 May 1968), operative paragraph 4 (prohibiting the transfer to the illegal régime in Southern Rhodesia or any commercial or public utility undertaking, including tourist enterprises, or to persons or bodies within Southern Rhodesia, of any funds for investment or any other financial or economic resources); S/RES/388 (6 April 1976), operative paragraphs 1 (clarifying that the sanctions prohibited the insurance of all commodities and products exported to, imported from, or located in, Southern Rhodesia), 2 (prohibiting the granting to any commercial, industrial or public utility in Southern Rhodesia the right to use any trade name, trade mark or registered design in connexion with the sale or distribution of any products, commodities or services); S/RES/409 (27 May 1977), operative paragraph 1 (requiring Member States to prohibit the use or transfer of funds in their territories by the illegal South Rhodesian régime).

¹⁰³ S/RES/661 (6 August 1990), operative paragraph 4 (prohibiting the provision to the Government of Iraq, to any commercial, industrial or public utility undertaking in Iraq or Kuwait, or to persons or bodies within Iraq or Kuwait, of any funds or other financial or economic resources); S/RES/687 (3 April 1991), operative paragraphs 20 (deciding implicitly that the comprehensive sanctions and financial sanctions imposed by resolution 661 (1990) would continue, by explicitly noting the types of commodities and products to which those prohibitions would no longer apply. For further details relating to those exemptions, see the section below), 22 (deciding that once Iraq had complied with the disarmament requirements under resolution 687 (1991) the comprehensive and financial sanctions would have no further force or effect).

¹⁰⁴ S/RES/883 (11 November 1993), operative paragraph 3 (requiring States in which there were funds or other financial resources owned or controlled by the Government or public authorities of Libya or any Libyan undertaking, to freeze those funds and resources and to ensure that neither they nor any other funds nor financial resources were made available to or for the benefit of the Government or public authorities of Libya or any Libyan undertaking).

¹⁰⁵ S/RES/757 (30 May 1992), operative paragraph 5 (requiring States to refrain from providing any funds or other financial or economic resources to any commercial, industrial or public utility operating in the Federal Republic of Yugoslavia (Serbia and Montenegro) and to prevent the removal of funds or resources from their territories to the Federal Republic of Yugoslavia (Serbia and Montenegro)); S/RES/820 (17 April 1993), operative paragraph 21 (requiring States to freeze funds in their territories belonging to or controlled by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) or commercial, industrial or public undertakings from the Federal Republic of Yugoslavia (Serbia and Montenegro)); S/RES/820 (17 April 1993), operative paragraph 27 (requiring States to prevent the provision of services, financial or otherwise, to any person or body for the purposes of any business carried on in the Federal Republic of Yugoslavia (Serbia and Montenegro)).

¹⁰⁶ S/RES/942 (23 September 1994), operative paragraph 11 (requiring States to freeze any funds or other financial assets or resources held within their territories if they belonged to an entity that was owned, controlled or incorporated by a person or entity from those parts of Bosnia and Herzegovina under the control of Bosnian Serb forces, or to an agent of such entities or people), operative paragraph 12 (requiring States to ensure that any payments accruing in their territories for entities doing business in, or owned, controlled or incorporated by persons or entities from those areas of Bosnia and Herzegovina under the control of the Bosnian Serb forces, would be paid only into frozen accounts) and operative paragraph 13 (requiring States to prohibit the provision of services, both financial and non-financial, to any person or body for the purposes of business being carried on in those areas of Bosnia and Herzegovina under the control of Bosnian Serb forces).

régimes against UNITA and the Taliban and Al Qaida, in addition to applying general financial sanctions against the targets, the Council has also directed financial sanctions against the personal finances of target policy-makers.¹⁰⁸

The Security Council has also clarified that States can be required to impose financial sanctions as part of their obligations to implement arms sanctions. In the case of the arms sanctions against Somalia, the Council clarified that States were to prevent the financing of acquisitions and deliveries of weapons and military equipment,¹⁰⁹ as well as the provision of financial assistance related to military activities.¹¹⁰

Exemptions from financial sanctions

¹⁰⁷ S/RES/841 (16 June 1993), operative paragraph 8 (requiring States in which there were funds owned or controlled by the Government of Haiti or the *de facto* authorities in Haiti to freeze those funds and resources and to ensure that neither they nor any other funds nor financial resources were made available to or for the benefit of the *de facto* authorities in Haiti).

¹⁰⁸ In connection with UNITA, see: S/RES/1173 (12 June 1998), operative paragraph 11 (requiring all States except Angola in which there were funds and financial resources of UNITA as an organization or of senior UNITA officials and adult members of their immediate families to freeze them and ensure that they were not made available for the use of those parties). In connection with the Taliban and Al Qaida, see: S/RES/1267 (15 October 1999), operative paragraph 4(b) (requiring States to freeze funds and other financial resources owned or controlled by the Taliban and to ensure that no funds or financial resources were made available to or for the benefit of the Taliban); S/RES/1333 (19 December 2000), operative paragraph 8(c) (requiring States to freeze funds and other financial assets of Usama bin Laden and individuals and entities associated with him, including those in Al Qaida, and to ensure that neither those nor any other funds were made available to or for the benefit of Usama bin Laden or individuals or entities associated with him, including Al Qaida); S/RES/1390 (16 January 2002), operative paragraph 2(a) (requiring States to freeze the funds and other financial assets or economic resources of Usama Bin Laden, members of Al Qaida and the Taliban and other individuals, groups, undertakings or entities associated with them, and to ensure that neither those nor any other funds were made available to or for the benefit of those individuals, groups, undertakings and entities).

In addition to those cases, in the case of Haiti the Security Council “strongly urged” States to apply financial sanctions against officers of the Haitian military and police and members of their immediate families, the major participants in the coup d’état of 1991 and in the illegal governments since the coup, as well as their immediate families, and those employed by the Haitian military, as well as their immediate families: S/RES/917 (6 May 1994), operative paragraph 4. However, due to the fact that the phrase adopted was “strongly urges” rather than “decides”, that instance does not qualify as an example of mandatory sanctions.

¹⁰⁹ S/RES/1425 (22 July 2002), operative paragraph 1.

¹¹⁰ S/RES/1425 (22 July 2002), operative paragraph 2.

The Security Council has provided exemptions from most instances of financial sanctions.¹¹¹ The majority of those exemptions have had a humanitarian dimension. The Council has thus provided exemptions from financial sanctions for the purchase of commodities and products that were exempt from comprehensive sanctions, doing so in respect of its sanctions régimes against Southern Rhodesia,¹¹² Iraq,¹¹³ the Federal Republic of Yugoslavia (Serbia-Montenegro)¹¹⁴ and the Bosnian Serbs.¹¹⁵ The Council has also provided exemptions for the provision of finance for pension purposes (Southern Rhodesia),¹¹⁶ for the provision of basic services (the Federal Republic of Yugoslavia (Serbia-Montenegro)),¹¹⁷ for payments related to activities of United Nations or other international actors (the Federal Republic of Yugoslavia (Serbia-Montenegro)),¹¹⁸ for

¹¹¹ Only in the case of the sanctions régime against UNITA did the Security Council fail to outline any exemptions.

¹¹² S/RES/253 (29 May 1968), operative paragraph 4 (exempting payments “exclusively for pensions or for strictly medical, humanitarian or educational purposes or for the provision of news material and in special humanitarian circumstances, food-stuffs”).

¹¹³ S/RES/661 (6 August 1990), operative paragraph 4 (exempting payments relating to supplies that were “intended strictly for medical purposes and, in humanitarian circumstances, foodstuffs”); S/RES/687 (3 April 1991), operative paragraph 20 (exempting financial transactions related to the sale or supply to Iraq of medicine and health supplies, foodstuffs, and materials and supplies for essential civilian needs).

¹¹⁴ S/RES/757 (30 May 1992), operative paragraphs 5 (exempting “payments exclusively for strictly medical or humanitarian purposes and foodstuffs”); S/RES/760 (18 June 1992), sole operative paragraph (exempting financial transactions related to the purchase of “commodities and products for essential humanitarian need”); S/RES/820 (17 April 1993), operative paragraph 27 (exempting the provision of financial and other services whose supply may be necessary for humanitarian or other exceptional purposes).

¹¹⁵ S/RES/942 (23 September 1994), operative paragraph 11 (exempting payments for supplies intended strictly for medical purposes or commodities and products for essential humanitarian needs).

¹¹⁶ S/RES/409 (27 May 1977), operative paragraph 1 (exempting the transfer of funds to offices or agencies established exclusively for pensions purposes).

¹¹⁷ S/RES/820 (17 April 1993), operative paragraph 27 (exempting the provision of financial and other services to businesses in the Federal Republic of Yugoslavia (Serbia-Montenegro) engaged in telecommunications, postal services and legal services consistent with the sanctions).

¹¹⁸ S/RES/757 (30 May 1992), operative paragraphs 10 (exempting financial transactions related to the activities of UNPROFOR, the Conference on Yugoslavia, and the EC Monitoring Mission).

payments on the ground of humanitarian need (the Taliban and Al Qaida),¹¹⁹ and to enable access to frozen personal finances for “basic” or “extraordinary” expenses (the Taliban and Al Qaida).¹²⁰

In addition to exemptions with a humanitarian dimension, the Council has also outlined some exemptions from financial sanctions that do not have an immediately identifiable humanitarian connection, including for funds derived from the sale or supply of petroleum or petroleum products and agricultural products or commodities, in the case of Libya,¹²¹ and for payments authorized by legitimate Governments with sovereignty over the area in which the target is located, in the case of the Bosnian Serbs and Haiti.¹²²

7.2 Non-economic sanctions

Non-economic sanctions are measures that seek to interrupt a target’s relations with the external world in areas other than basic trade. The Security Council has employed the following examples of non-economic sanctions: diplomatic and representative sanctions;

¹¹⁹ Such an exemption was provided in relation to the Taliban sanctions régime, before it was expanded to target Usama Bin Laden and Al Qaida and individuals, groups and entities associated with them. See: S/RES/1267 (15 October 1999), operative paragraph 4(b) (exempting payments on the grounds of humanitarian need, as approved by the Taliban Sanctions Committee on a case-by-case basis).

¹²⁰ S/RES/1452 (20 December 2002), operative paragraph 1 (exempting funds, assets or resources necessary for “basic” or “extraordinary” expenses); S/RES/1452 (20 December 2002), operative paragraph 2 (qualifying that States might allow for frozen accounts to earn interest and to receive outstanding payments owed under contracts, agreements or obligations that had arisen prior to the application of sanctions).

¹²¹ S/RES/883 (11 November 1993), operative paragraph 4 (exempting funds or financial resources derived from the sale or supply of any petroleum or petroleum products, including natural gas and natural gas products, or agricultural products or commodities, originating in Libya).

¹²² In connection with the sanctions régime against the Bosnian Serbs, see: S/RES/942 (23 September 1994), operative paragraph 11 (exempting payments authorised by the Government of the Republic of Bosnia and Herzegovina). In connection with the sanctions régime against Haiti, see: S/RES/873 (13 October 1993), operative paragraph 2 (providing for the possibility of exemptions from the financial sanctions upon the request of President Aristide or Prime Minister Malval of Haiti).

transportation sanctions; travel sanctions; aviation sanctions; sporting, cultural and scientific sanctions; and telecommunications sanctions.

7.2.1 Diplomatic and representative sanctions

Diplomatic and representative sanctions aim to interrupt the official relations between a target and the external world. The distinction between the two is that diplomatic sanctions are applied against a target that is recognized as a State by the international community and therefore maintains diplomatic relations with other States. Representative sanctions, on the other hand, are applied against a target that is not recognized as a State and whose official relations with the external world are more correctly described as “representative” rather than “diplomatic”. In applying diplomatic and representative sanctions, the Council has required States to refrain from recognizing¹²³ a target or to restrict or terminate diplomatic or representative relations with a target, whether directed against activities within the States applying the sanctions or against activities within the target. The Council has employed diplomatic sanctions as part of its sanctions régimes against Libya¹²⁴ and Sudan,¹²⁵ and it has applied representative sanctions as part of its sanctions régimes

¹²³ The term recognizing in this context denotes the legal act of recognition.

¹²⁴ S/RES/748 (31 March 1992), operative paragraph 6(a) (requiring all States to significantly reduce the number and level of staff at Libyan diplomatic missions and consulates and to restrict or control the movement of staff who remained within their territory); S/RES/883 (11 November 1993), operative paragraph 7 (reaffirming the diplomatic sanctions and clarifying that the sanctions were to apply to missions and consulates established subsequent to resolution 748 (1992)).

¹²⁵ S/RES/1054 (26 April 1996), operative paragraph 3(a) (requiring States to reduce the number and level of staff at Sudanese diplomatic missions and consular posts, and to restrict or control the movement within their territory of all such staff who were to remain).

against Southern Rhodesia,¹²⁶ the Federal Republic of Yugoslavia (Serbia-Montenegro),¹²⁷ UNITA¹²⁸ and the Taliban.¹²⁹

Exemptions from diplomatic and representative sanctions

The Security Council has not outlined any exemptions from diplomatic sanctions, and it has only designated an exemption from representative sanctions on one occasion. In that instance, it exempted from the representative sanctions against UNITA contact with UNITA initiated by representatives of the Government of Unity and National Reconciliation, the United Nations and observer States to the Lusaka Protocol.¹³⁰

7.2.2 Transportation sanctions

Transportation sanctions are measures that aim to prevent the flow of transportation, whether by land, sea or air, to a target.¹³¹ Although transportation sanctions will implicitly be applied in respect of any goods or commodities prohibited by economic sanctions, the Security Council has nevertheless taken the step on a number of occasions of stating explicitly that the flow of transportation to or from the target was prohibited as part of a

¹²⁶ S/RES/277 (18 March 1970), operative paragraph 2 (requiring States to refrain from recognizing the illegal régime or rendering any assistance to it); S/RES/277 (18 March 1970), operative paragraph 9(a) (requiring States to sever diplomatic and other relations with the illegal régime).

¹²⁷ S/RES/757 (30 May 1992), operative paragraph 8(a) (requiring States to reduce the level of staff at diplomatic missions and consular posts of the Federal Republic of Yugoslavia (Serbia and Montenegro)).

¹²⁸ S/RES/1127 (28 August 1997), operative paragraph 4(c) (requiring States to close all UNITA offices in their territories); S/RES/1173 (12 June 1998), operative paragraph 12(a) (requiring States to prevent all official contacts with the UNITA leadership in areas of Angola to which State administration had not been extended).

¹²⁹ S/RES/1333 (19 December 2000), operative paragraphs 8(a) (requiring States to close all offices on their territories belonging to the Taliban).

¹³⁰ S/RES/1173 (12 June 1998), operative paragraph 12(a).

¹³¹ Transportation sanctions are to be distinguished from sanctions against trade in forms of transport, as described above. Transportation sanctions target the transportation of products and commodities, whereas sanctions against means of transport prohibit trade in those means of transport as types of products.

sanctions régime, doing so in relation to the sanctions régimes against Southern Rhodesia,¹³² the Federal Republic of Yugoslavia (Serbia-Montenegro)¹³³ and the Bosnian Serbs.¹³⁴

Exemptions from transportation sanctions

In some cases where the Council has explicitly applied sanctions against transportation, it has provided exemptions for the transport of humanitarian items exempt from sanctions (the Federal Republic of Yugoslavia (Serbia-Montenegro) and the Bosnian Serbs).¹³⁵ The Council has also provided exemptions for cases of *force majeure* (the Federal Republic of Yugoslavia (Serbia-Montenegro) and the Bosnian Serbs),¹³⁶ and where

¹³² S/RES/277 (18 March 1970), operative paragraph 9(b) (requiring States to interrupt all transportation to and from Southern Rhodesia).

¹³³ S/RES/820 (17 April 1993), operative paragraph 22 (requiring States to prohibit the transport of any commodities or products across the land borders, or to the ports, of the Federal Republic of Yugoslavia (Serbia and Montenegro); operative paragraph 24 (requiring States to impound all means of transport owned or operated from the Federal Republic of Yugoslavia (Serbia and Montenegro) or suspected of having violated the arms embargo or sanctions); operative paragraph 25 (requiring States to detain any other means of transport suspected of having violated the embargo or the sanctions); operative paragraph 28 (requiring States to prohibit commercial maritime traffic from entering the territorial sea of the Federal Republic of Yugoslavia (Serbia and Montenegro)).

¹³⁴ S/RES/942 (23 September 1994), operative paragraph 15 (prohibiting all commercial river traffic from entering the ports of those areas of the Republic of Bosnia and Herzegovina under the control of the Bosnian Serb forces).

¹³⁵ In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/820 (17 April 1993), operative paragraph 22 (exempting from the prohibition upon the transport of any commodities or products across the land borders, or to the ports, of the Federal Republic of Yugoslavia (Serbia and Montenegro), of medical supplies and foodstuffs, other essential humanitarian supplies when approved on a case-by-case basis by the 724 Committee, and limited transshipments when authorised on an exceptional basis by the Committee); operative paragraph 28 (exempting from the prohibition against the entry of commercial maritime traffic into the territorial sea of the Federal Republic of Yugoslavia (Serbia and Montenegro) those ships that were authorised on a case-by-case basis by the 724 Committee). In connection with the Bosnian Serbs, see: S/RES/942 (23 September 1994), operative paragraph 15 (exempting from the prohibition on the entry into the ports of those areas of the Republic of Bosnia and Herzegovina under the control of the Bosnian Serb forces of all commercial river traffic those shipments authorised on a case-by-case basis by the sanctions committee, or by the Government of the Republic of Bosnia and Herzegovina, or in the case of *force majeure*).

¹³⁶ In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/820 (17 April 1993), operative paragraph 28 (exempting from the prohibition against the entry of commercial maritime traffic into the territorial sea of the Federal Republic of Yugoslavia (Serbia and Montenegro) those ships seeking safe harbour in the case of *force majeure*). In connection with the Bosnian Serbs, see: S/RES/942 (23 September 1994), operative paragraph

requested by a legitimate Government with sovereignty over the area in which the target is located (the Government of Bosnia and Herzegovina in the case of the Bosnian Serbs).¹³⁷

7.2.3 Travel sanctions

Travel sanctions are measures that seek to prohibit or inhibit the ability of individuals associated with the target of a sanctions régime to travel internationally. Travel sanctions have been applied against a population as a whole, against individual target policy-makers and those related to or associated with them, and against violators of sanctions. The Security Council has applied travel sanctions against all nationals of a target on one occasion – in the case of the sanctions régime against Southern Rhodesia.¹³⁸ The Council has directed travel sanctions against particular individuals or groups of individuals associated with the target's policy-makers in relation to nine sanctions régimes, including as part of its régimes against Iraq,¹³⁹ Libya,¹⁴⁰ the Bosnian Serbs,¹⁴¹ Haiti,¹⁴² UNITA,¹⁴³ Sudan,¹⁴⁴ Sierra Leone,¹⁴⁵ the

15 (exempting from the prohibition on the entry into the ports of those areas of the Republic of Bosnia and Herzegovina under the control of the Bosnian Serb forces cases of *force majeure*).

¹³⁷ S/RES/942 (23 September 1994), operative paragraph 15 (exempting from the prohibition on the entry into the ports of those areas of the Republic of Bosnia and Herzegovina under the control of the Bosnian Serb forces of all commercial river traffic those shipments authorised by the Government of the Republic of Bosnia and Herzegovina).

¹³⁸ S/RES/253 (29 May 1968), operative paragraph 5 (requiring States to prevent the entry into their territories of persons travelling on a Southern Rhodesian passport or a passport purported to have been issued by the illegal minority régime, as well as persons ordinarily resident in Southern Rhodesia and suspected of having furthered or encouraged, or of being likely to further or encourage, the unlawful actions of the illegal régime in Southern Rhodesia).

¹³⁹ S/RES/1137 (12 November 1997), operative paragraph 4 (requiring States to prevent the entry into or transit through their territories of all Iraqi officials and members of the armed forces who were responsible for or participated in instances of interference with the work of UNSCOM).

¹⁴⁰ S/RES/748 (31 March 1992), operative paragraph 6(c) (requiring States to take steps to deny entry to or expel Libyan nationals who had been denied entry to or expelled from other States because of their involvement in terrorist activities).

¹⁴¹ S/RES/942 (23 September 1994), operative paragraph 14 (requiring States to prevent the entry to their territories of: members of the authorities in those areas of Bosnia and Herzegovina under the control of the Bosnian Serb forces and those acting on behalf of such authorities; officers of the Bosnian Serb military and paramilitary forces and those acting on behalf of such forces; persons found to have provided financial, material, logistical, military or other tangible support to Bosnian Serb forces in violation of the sanctions; and persons in or resident of those areas

Taliban and Al Qaida¹⁴⁶ and Liberia (in the second instance).¹⁴⁷ In relation to the second sanctions régime against Liberia, the Council also applied travel sanctions against those who had violated sanctions.¹⁴⁸

Exemptions from travel sanctions

The Security Council has provided exemptions from travel sanctions in a number of instances, exempting travel: on humanitarian grounds (Southern Rhodesia, Sierra Leone and Liberia – in the second instance);¹⁴⁹ to facilitate a peace process (the Bosnian Serbs and

of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces who found to have violated or contributed to the violation of the sanctions against the Bosnian Serb party).

¹⁴² S/RES/917 (6 May 1994), operative paragraph 3 (requiring States to prevent the entry into their territory of: officers of the Haitian military, including the police, and their families; the major participants in the 1991 *coup d'état* and members of the illegal governments in power since the *coup*, as well as their immediate families; and people employed by or acting on behalf of the Haitian military and their immediate families).

¹⁴³ S/RES/1127 (28 August 1997), operative paragraph 4 (requiring States to prevent the entry into or transit through their territories of senior UNITA officials and all adult members of their immediate families, and to suspend or cancel any travel documents issued to people in those categories).

¹⁴⁴ S/RES/1054 (26 April 1996), operative paragraph 3(b) (requiring States to restrict the entry into or transit through their territory of members of the Government of Sudan, officials of that Government, and members of the Sudanese armed forces).

¹⁴⁵ S/RES/1132 (8 October 1997), operative paragraph 5 (requiring States to prevent the entry into or transit through their territories of the military junta and adult members of their families); S/RES/1171 (5 June 1998), operative paragraph 5 (requiring States to prevent the entry into or transit through their territories of leading members of the former military junta and of the Revolutionary United Front).

¹⁴⁶ S/RES/1390 (16 January 2002), operative paragraph 2(b) (requiring States to prevent the entry into or transit through their territories of Usama Bin Laden, members of Al Qaida and the Taliban, and other individuals, groups, undertakings and entities associated with them).

¹⁴⁷ S/RES/1343 (7 March 2001), operative paragraph 7(a) (requiring States to prevent the entry into or transit through their territories of senior members of the Liberian Government and armed forces, as well as the spouses of those individuals and any other individuals providing financial or military support to rebel groups in countries neighbouring Liberia, and in particular the RUF in Sierra Leone).

¹⁴⁸ S/RES/1478 (6 May 2003), operative paragraph 28 (requiring all States to prevent the entry into or transit through their territories of individuals determined by the 1343 Committee to be in violation of the arms sanctions imposed by paragraph 5 of resolution 1343 (2001)).

¹⁴⁹ In connection with Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 5 (exempting from the travel sanctions travel “on exceptional humanitarian grounds”). In connection with Sierra Leone, see: S/RES/1132 (8 October 1997), operative paragraph 5 (exempting from the travel sanctions travel for “verified humanitarian purposes”, when authorized by the Sierra Leone Sanctions Committee). In connection with Liberia (in the second

Liberia – in the second instance);¹⁵⁰ consistent with the purposes of a sanctions régime (the Bosnian Serbs, Haiti, Sierra Leone, the Taliban & Al Qaida, and Liberia – in the second instance);¹⁵¹ for the fulfilment of a judicial process (the Taliban and Al Qaida);¹⁵² and on official intergovernmental business (Liberia – in the second instance).¹⁵³ The Council has also begun to issue a standard exemption providing that nothing would oblige a State to refuse entry to its own nationals, doing so in relation to the sanctions régimes against UNITA,¹⁵⁴ Sierra Leone,¹⁵⁵ the Taliban/Al Qaida¹⁵⁶ and Liberia (in the second instance).¹⁵⁷

instance), see: S/RES/1343 (7 March 2001), operative paragraph 7(b) (providing that the travel sanctions would not apply when travel was justified on the grounds of humanitarian need).

¹⁵⁰ In connection with the Bosnian Serbs, see: S/RES/942 (23 September 1994), operative paragraph 14 (exempting travel for purposes consistent with the pursuit of the peace process, when authorized by the 724 Committee or the Security Council). In connection with Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 7(b) (exempting travel that would assist in the peaceful resolution of conflict in the subregion).

¹⁵¹ In connection with the Bosnian Serbs, see: S/RES/942 (23 September 1994), operative paragraph 14 (exempting travel for purposes consistent with the relevant resolutions of the Council, when authorized by the 724 Committee or the Security Council). In connection with Haiti, see: S/RES/917 (6 May 1994), operative paragraph 3 (providing for the possibility of exemptions from the travel sanctions when approved, by the Haiti Sanctions Committee, for purposes consistent with the relevant Security Council resolutions addressing the situation in Haiti). In connection with Sierra Leone, see: S/RES/1132 (8 October 1997), operative paragraph 5 (providing for the possibility of exemptions from the travel sanctions, when approved by the Sierra Leone Sanctions Committee, for purposes consistent with ensuring that the military junta relinquished power in Sierra Leone and made way for the restoration of the democratically elected Government and a return to constitutional order); S/RES/1171 (5 June 1998), operative paragraph 5 (providing simply that exemptions could be authorized by the Sierra Leone Sanctions Committee, without stipulating the cases in which such exemptions might be provided). In connection with the Taliban and Al Qaida, see: S/RES/1390 (16 January 2002), operative paragraph 2(b) (providing for the possibility of exemptions from the travel sanctions where approved by the Taliban/Al Qaida Sanctions Committee). In connection with Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 7(b) (providing that the travel would not be prohibited where it would promote Liberian compliance with the objectives of the sanctions régime).

¹⁵² S/RES/1390 (16 January 2002), operative paragraph 2(b) (exempting travel where necessary for the fulfilment of a judicial process).

¹⁵³ S/RES/1343 (7 March 2001), operative paragraph 7(a) (providing that the travel sanctions would not apply to representatives of the Liberian Government travelling on official business to United Nations headquarters or to official meetings of the Mano River Union, ECOWAS or the OAU).

¹⁵⁴ S/RES/1127 (28 August 1997), operative paragraph 4(a).

¹⁵⁵ S/RES/1132 (8 October 1997), operative paragraph 5; S/RES/1171 (5 June 1998), operative paragraph 5.

¹⁵⁶ S/RES/1390 (16 January 2002), operative paragraph 2(b).

7.2.4 Aviation sanctions

Aviation sanctions aim to prohibit flights to and from a target or to inhibit a target's ability to utilize flights within its own area of influence.¹⁵⁷ The Security Council has employed aviation sanctions banning all flights to and from a target as part of its sanctions régimes against Southern Rhodesia,¹⁵⁹ Iraq,¹⁶⁰ Libya,¹⁶¹ the Federal Republic of Yugoslavia (Serbia-Montenegro),¹⁶² Haiti,¹⁶³ UNITA¹⁶⁴ and the Taliban and Al Qaida.¹⁶⁵ The Council has imposed sanctions targeting the operations of a target's national airline in the case of the sanctions régimes against Libya,¹⁶⁶ Sudan¹⁶⁷ and the Taliban.¹⁶⁸ In examples of sanctions

¹⁵⁷ S/RES/1343 (7 March 2001), operative paragraph 7(a); S/RES/1478 (6 May 2003), operative paragraph 28.

¹⁵⁸ As noted above, aviation sanctions are to be distinguished from aircraft sanctions, which prohibit trade in aircraft and aircraft parts.

¹⁵⁹ S/RES/253 (29 May 1968), operative paragraph 6 (requiring States to prevent airline companies from flying to or from Southern Rhodesia and from linking up with Southern Rhodesian airlines).

¹⁶⁰ S/RES/670 (25 September 1990), operative paragraph 3 (requiring all States to prevent aircraft destined for, or originating from Iraq or Kuwait, from departing from or over-flying their territory).

¹⁶¹ S/RES/748 (31 March 1992), operative paragraph 4(a) (requiring States to deny permission to any aircraft to take off from, land in, or overfly their territory if it was destined to land in or had taken off from the territory of Libya).

¹⁶² S/RES/757 (30 May 1992), operative paragraph 7(a) (requiring States to deny permission to any aircraft to take off from, land in, or overfly their territories if it was destined for or had departed from the Federal Republic of Yugoslavia (Serbia and Montenegro)).

¹⁶³ S/RES/917 (6 May 1994), operative paragraph 2 (requiring States to deny permission to any aircraft to take off from, land in or overfly their territory if it was destined for or had originated from Haiti).

¹⁶⁴ S/RES/1127 (28 August 1997), operative paragraph 4(d)(i) (requiring States to prevent aircraft from arriving in, departing from, or overflying their territories if they had originated from or were destined for places not on a list of places cleared by the Angolan Government).

¹⁶⁵ S/RES/1267 (15 October 1999), operative paragraph 4(a) (requiring States required to deny aircraft permission to land in or fly over their territories if owned or operated by the Taliban); S/RES/1333 (19 December 2000), operative paragraph 11 (requiring States to prevent all aircraft flying to or from Taliban-controlled territories from landing in, departing from or over-flying their territories).

¹⁶⁶ S/RES/748 (31 March 1992), operative paragraph 6(b) (requiring States to prevent the operation of all Libyan Arab Airlines offices); S/RES/883 (11 November 1993), operative paragraph 6(a) (requiring States to ensure the immediate closure of all Libyan Arab Airlines offices within their territories), operative paragraph 6(b) (requiring States to prohibit any commercial transactions with Libyan Arab Airlines by their nationals or from their territory, including the honouring or endorsement of any tickets or other documents issued by that airline).

that aim to inhibit a target's ability to utilize flights within its own sphere of influence, the Council has prohibited the provision of technical assistance, advice, training, insurance and insurance-related payments related to the use, manufacture or maintenance of aircraft within areas controlled by a target as part of its sanctions régimes against Libya,¹⁶⁹ the Federal Republic of Yugoslavia (Serbia-Montenegro)¹⁷⁰ and UNITA.¹⁷¹

Exemptions from aviation sanctions

The Security Council has provided exemptions from most instances of aviation sanctions. Exemptions have been granted from aviation sanctions prohibiting flights to or from a target in the following situations: when carrying medical supplies, foodstuffs and other humanitarian items (Iraq, the Federal Republic of Yugoslavia (Serbia-Montenegro), Libya, Haiti, UNITA, and the Taliban & Al Qaida);¹⁷² in cases of medical emergency (UNITA);¹⁷³

¹⁶⁷ S/RES/1070 (16 August 1996), operative paragraph 3 (requiring States to deny aircraft permission to take off from, land in or overfly their territories where those aircraft were owned by Sudan Airways or the Sudanese Government, or by an undertaking that was owned or controlled by Sudan Airways or the Sudanese Government).

¹⁶⁸ S/RES/1333 (19 December 2000), operative paragraph 8(b) (requiring States to close all offices on their territories belonging to Afghan airlines).

¹⁶⁹ S/RES/748 (31 March 1992), operative paragraph 4(b) (requiring States to prohibit the provision to Libya of aircraft engineering or servicing of, or airworthiness certification or aircraft insurance to, Libyan aircraft); S/RES/883 (11 November 1993), operative paragraph 6(d) (requiring States to prohibit the supply of any materials destined for the construction, improvement or maintenance of Libyan airfields, or of engineering or other services for the maintenance of Libyan airfields), operative paragraph 6(e) (requiring States to prohibit the provision of advice, assistance, or training to Libyan pilots, flight engineers, or aircraft and ground maintenance personnel associated with the operation of aircraft and airfields within Libya); operative paragraph 6(f) (requiring States to prohibit the renewal of any direct insurance for Libyan aircraft).

¹⁷⁰ S/RES/757 (30 May 1992), operative paragraph 7(b) (requiring States to prohibit the provision of maintenance services and parts in support of aircraft registered in that country).

¹⁷¹ S/RES/1127 (28 August 1997), operative paragraph 4(d)(iii) (requiring States to prohibit the provision of engineering, servicing, certification or insurance for aircraft registered in Angola, other than those designated by the Angolan Government).

¹⁷² In connection with Iraq, see: S/RES/670 (25 September 1990), operative paragraph 3 (exempting aircraft carrying food, in humanitarian circumstances, when authorized by the 661 Committee in accordance with resolution 666 (1990), and supplies intended strictly for medical purposes). In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 7(a) (exempting flights made for humanitarian or other

for instances of religious obligation (the Taliban and Al Qaida);¹⁷⁴ for flights by the United Nations or other international actors (Iraq, Libya, Federal Republic of Yugoslavia (Serbia-Montenegro) and Taliban and Al Qaida);¹⁷⁵ in order to enable the inspection and verification of cargo (Iraq);¹⁷⁶ where authorized by a Sanctions Committee (Iraq);¹⁷⁷ for regularly

purposes consistent with the sanctions regime, when approved by the 724 Committee). In connection with Libya, see: S/RES/748 (31 March 1992), operative paragraph 4(a) (providing exemptions from the prohibition against flights to or from Libya when approved by the Libya Sanctions Committee on grounds of "significant humanitarian need"). In connection with Haiti, see: S/RES/917 (6 May 1994), operative paragraph 2 (exempting flights approved for humanitarian purposes by the Haiti Sanctions Committee). In connection with UNITA, see: S/RES/1127 (28 August 1997), operative paragraph 5 (exempting "flights carrying food, medicine or supplies for essential humanitarian needs", when approved in advance by the UNITA Sanctions Committee). In connection with the Taliban and Al Qaida, see: S/RES/1267 (15 October 1999), operative paragraph 4(a) (exempting flights pursuant to a humanitarian need, when approved in advance by the 1267 Committee); S/RES/1333 (19 December 2000), operative paragraph 11 (exempting flights approved in advance by the Committee on the grounds of humanitarian need, when approved in advance by the 1267 Committee).

¹⁷³ S/RES/1127 (28 August 1997), operative paragraph 5 (exempting "cases of medical emergency", when approved in advance by the UNITA Sanctions Committee).

¹⁷⁴ S/RES/1267 (15 October 1999), operative paragraph 4(a) (exempting flights connected with the Hajj pilgrimage, which are qualified as a sub-category of cases of "humanitarian need", when approved in advance by the 1267 Committee); S/RES/1333 (19 December 2000), operative paragraph 11 (exempting flights approved in advance by the Committee on the grounds of religious obligation, such as the performance of the Hajj, when approved in advance by the 1267 Committee).

¹⁷⁵ In connection with Iraq, see: S/RES/670 (25 September 1990), operative paragraphs 3, 4(c) (exempting flights certified by the United Nations as solely for the purpose of the United Nations Iran-Iraq Military Observer Group). In connection with Libya, see: S/RES/910 (14 April 1994), operative paragraph 1 (exempting U.N. aircraft carrying a reconnaissance team to explore the feasibility of deploying a team of U.N. observers to monitor Libya's withdrawal from the Aouzou strip); S/RES/915 (4 May 1994), operative paragraph 4 (exempting U.N. aircraft carrying the observer group subsequently established for that purpose. The observer group - the United Nations Aouzou Strip Observer Group (UNASOG) - was established in operative paragraph 2 of the same resolution). In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 10 (exempting flights connected to the activities of UNPROFOR, the CY and the EC Monitoring Mission). The Council reaffirmed the ongoing exemption of these entities in subsequent resolutions: see, e.g., S/RES/820 (17 April 1993), operative paragraph 30. In connection with the Taliban and Al Qaida, see: S/RES/1333 (19 December 2000), operative paragraph 12 (exempting flights being undertaken for humanitarian purposes by humanitarian organizations, when they featured on a list approved by the 1267 Committee).

¹⁷⁶ S/RES/670 (25 September 1990), operative paragraph 4(a) (permitting aircraft destined for or originating from Iraq or Kuwait to land if for the purpose of inspection to ensure that it was not carrying cargo in violation of the sanctions).

¹⁷⁷ S/RES/670 (25 September 1990), operative paragraph 4(b) (exempting flights approved by the Iraq Sanctions Committee).

scheduled commercial passenger flights (Haiti);¹⁷⁸ and to facilitate the achievement of the objectives of a sanctions régime (the Taliban and Al Qaida).¹⁷⁹ The Council also outlined exemptions from sanctions aiming to inhibit the operation of flights on one occasion, exempting from the Libya sanctions régime the provision of materials for the construction, improvement or maintenance of Libyan airfields for emergency equipment and equipment and services directly related to civilian air traffic control.¹⁸⁰

7.2.5 Sporting, cultural and scientific sanctions

Sporting, cultural and scientific sanctions are measures that aim to prohibit sporting, cultural and scientific relations between the target and the external world.¹⁸¹ The Security Council has employed sporting, cultural and scientific sanctions once, as part of the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro).¹⁸²

7.2.6 Telecommunications sanctions

Telecommunications sanctions, which are listed in Article 41 as one potential measure that might be applied as part of a sanctions régime, would entail disrupting

¹⁷⁸ S/RES/917 (6 May 1994), operative paragraph 2 (exempting regularly scheduled commercial passenger flights).

¹⁷⁹ S/RES/1333 (19 December 2000), operative paragraph 11 (exempting flights approved in advance by the Committee on the grounds that the flight was likely to promote Taliban compliance with the objectives of the sanctions régime or discussion of a peaceful resolution of the conflict in Afghanistan).

¹⁸⁰ S/RES/883 (11 November 1993), operative paragraph 6(d).

¹⁸¹ Sporting, cultural and scientific sanctions could be treated as three separate types of sanctions. They are treated as a single category here, because they were applied at the same time by the Council in the case of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro).

¹⁸² S/RES/757 (30 May 1992), operative paragraph 8(b) (requiring States to prevent the participation in sporting events on their territory of persons or groups representing the Federal Republic of Yugoslavia (Serbia and Montenegro)); operative paragraph 8(c) (requiring States to suspend scientific and technical cooperation and cultural exchanges and visits involving persons or groups officially sponsored by or representing the Federal Republic of Yugoslavia (Serbia and Montenegro)).

telecommunications between the target of a sanctions régime and the outside world. Although the Security Council has not yet employed telecommunications sanctions, it nevertheless expressed its readiness to consider imposing such measures as part of the sanctions régime against UNITA.¹⁸³ In another action linked to the potential disruption of a target's telecommunications, the Council encouraged the Federal Republic of Yugoslavia (Serbia-Montenegro) to sever telecommunications links between it and the areas of Bosnia and Herzegovina under the control of the Bosnian Serbs, while that group was subject to U.N. sanctions.¹⁸⁴

¹⁸³ S/RES/1221 (12 January 1999), operative paragraph 8 [expressing its readiness to consider the imposition of telecommunications sanctions and requesting the 864 Committee to explore and report on that possibility].

¹⁸⁴ S/RES/988 (21 April 1995), operative paragraph 10. The Federal Republic of Yugoslavia (Serbia-Montenegro) had severed such telecommunications once before, in August 1994, so the Council's encouragement was phrased in terms of reinstating that severance.

8. *Fine-tuning sanctions: clarifying senders and targets, defining temporal application and addressing unintended consequences*

In its decisions establishing the legal basis for sanctions and delineating their scope, the Council often employs other mechanisms to fine-tune its sanctions régimes. Among these mechanisms, the Council has clarified sanctions senders and targets, defined the temporal application of sanctions, and sought to address the unintended consequences of its sanctions régimes upon civilian populations and third States.

8.1 Identifying the actors who must apply sanctions

As noted above, Article 48 of the Charter provides that the Security Council may decide to call upon some or all Members of the United Nations to take action to implement its decisions.¹ In practice, however, the Council has tended to leave the obligations created by its sanctions régimes general, stipulating simply that either all Member States were required to impose the sanctions (as in the case of the sanctions régime against the illegal minority régime in Southern Rhodesia) or that “all States” were required to impose the sanctions.² The Council has, however, called upon particular States to take action to improve the implementation or enforcement of sanctions.³

8.2 Identifying sanctions targets and targeting decision-makers

As the Charter framework for collective security was designed to address disputes between States, the founders of the U.N. likely envisaged sanctions being applied against

¹ Article 48, Charter of the United Nations.

² See Chapter 4, section 4.2, above.

³ For details of the actions required or requested of particular States, see Chapter 10, below.

State targets. In practice, sanctions have been applied against a range of targets, including single and multiple States, failed States, as well as against pseudo-State-, sub-State- and extra-State-actors. In addition, the practice of the Security Council demonstrates an increasing recognition of the desirability of applying measures that seek to impact decision-makers within the general group against which sanctions are imposed. When the Council imposes sanctions, it therefore undertakes a two-step process of targeting. The first step is to identify the general target against which the sanctions will be imposed, and the second step is to consider implementing measures that will directly target decision-makers within the general target.

8.2.1 Identifying the target(s) against which sanctions are to be applied: the diverse range of targets

i. Single State targets

The Security Council has targeted single States in the manner likely envisaged by the founders of the U.N. in the cases of the sanctions against South Africa, the former Yugoslavia, Libya, Sudan, the Federal Republic of Yugoslavia to address the situation in Kosovo, and Liberia to address its support of rebel groups in the region. In each of these instances, the sanctions were imposed against a functioning Government and were applied to the territory of the State as a whole. In the case of the former Yugoslavia sanctions régime, however, the maintenance of the sanctions after the dissolution of Yugoslavia meant that their target effectively became the successor States of the former Yugoslavia.

ii. Multiple States targets

As just mentioned, the continuation of the former Yugoslavia sanctions beyond the dissolution of Yugoslavia effectively led, albeit unintentionally, to the first application of a

U.N. sanctions régime against multiple State targets. The Council subsequently imposed sanctions against multiple State targets in the case of Ethiopia and Eritrea, in an attempt to resolve the conflict between those two countries.

iii. De facto State targets

The term “*de facto* State targets” is used here to denote targets which are in *de facto* control of the machinery of Government within a State, but which are not recognized by the international community to be the legitimate, or *de jure*, Government of that State. The Security Council has imposed sanctions against *de facto* State targets in the cases of the Southern Rhodesia, the Federal Republic of Yugoslavia (Serbia-Montenegro), Haiti, Sierra Leone and Afghanistan. In the case of Southern Rhodesia, the sanctions were applied against the illegal white minority régime led by Ian Smith. In the case of the Federal Republic of Yugoslavia (Serbia-Montenegro), sanctions were applied against the *de facto* Government of Serbia-Montenegro, led by Slobodan Milosevic.⁴ In the case of Haiti, the sanctions were employed against the *de facto* authorities who had seized power from the democratically-elected Government of President Aristide. In the case of Sierra Leone, the sanctions were initially applied against the military junta that had seized power from the democratically-elected Government of Sierra Leone. Finally, in the case of Afghanistan, the

⁴ The Federal Republic of Yugoslavia (Serbia-Montenegro) is treated here as a case of a *de facto* State target rather than as a State target due to a dispute concerning that entity’s international status which took place while sanctions were imposed. The international community refused to recognize the claim made by the Federal Republic of Yugoslavia (Serbia-Montenegro) to the former Yugoslavia’s membership in the United Nations. It was also hesitant to grant the Federal Republic of Yugoslavia (Serbia-Montenegro) membership in its own right until it had engaged meaningfully in the peace process in the former Yugoslavia. Ultimately, it was admitted to membership in the United Nation on 1 November 2000, under the name “the Federal Republic of Yugoslavia”. See: S/RES/1326 (31 October 2000) (recommending to the General Assembly that the Federal Republic of Yugoslavia be admitted to membership); A/RES/55/12 (1 November 2000) (resolution of the General Assembly admitting the Federal Republic of Yugoslavia as a Member State).

sanctions were initially imposed against the Taliban régime.⁵ In the cases of Southern Rhodesia, Haiti and Sierra Leone, the sanctions were applied against the entire territories of the States over which the *de facto* authorities were exercising control. In the case of the sanctions against the Taliban, however, the sanctions were applied against Taliban-controlled territory, which initially amounted to approximately 90 percent of the total territory of Afghanistan.

iv. Failed State targets

The Security Council has applied sanctions against targets which have effectively constituted failed States in the cases of Somalia, Liberia and Rwanda. In each of those instances the relevant country found itself in a state of chaotic civil war and the Security Council imposed an arms embargo with the aim of fostering peace and stability. In the case of the sanctions against Rwanda, however, the sanctions régime was modified fifteen months after its initial application, such that it exempted the then Government and targeted sub-State actors in Rwanda and neighbouring States.⁶

v. Sub-State targets

The main characteristic of sub-State targets is that they operate within, and tend to pose a threat to the peace and security of, a State. In general, sub-State targets are rebel groups that seek to acquire control of the State from the existing Government. The Security

⁵ With the Security Council's subsequent modification of the Taliban sanctions régime, such that the sanctions subsequently targeted first the activities within Afghanistan of the Taliban, Usama Bin Laden, Al Qaida, and associates of those entities, then second the activities of those entities wherever they may take place, the target of the régime changed from being a pseudo-State to a sub-State actor (in the case of the Taliban) and extra-State actors (in the cases of Bin Laden and Al Qaida and their associates). For discussion of those aspects of the sanctions régime, see the discussion of sub-State and extra-State actors.

⁶ For further discussion, see the discussion on sub-State targets.

Council has applied sanctions against sub-State actors in the case of the Bosnian Serbs, UNITA, Rwanda, Sierra Leone, and the Taliban. In the case of the Bosnian Serbs and UNITA, the sanctions targeted those sub-State actors from the point at which they were imposed until they were terminated. In the case of the sanctions against Rwanda, the sanctions were initially imposed against a failed-State target. The sanctions régime was subsequently modified, however, to exempt the new Rwandan Government from the arms embargo, making the new target of the sanctions non-Government forces operating in Rwanda, and in particular forces of the former Rwandan Government.⁷ In the case of the sanctions against Sierra Leone and the Taliban, the Security Council initially imposed the sanctions against pseudo-State targets, before focusing them against sub-State targets. In the case of Sierra Leone, the target shifted once the Sierra Leone Government was returned to power, such that the sanctions were directed against the former military junta and members of the RUF. For its part, the Taliban changed from a pseudo-State to a sub-State target once it lost control of the reins of power in Afghanistan.⁸

vi. Extra-State targets

An extra-State target is one which does not maintain a connection with a particular geographical base or operate solely within a particular State. The only examples of extra-

⁷ Although the resolutions of the Security Council modifying the sanctions refer generally to “non-governmental forces”, it is clear from various statements by the Security Council that the main target of the sanctions was former Rwandan Government. See for example the following provisions expressing great concern at reports that elements of the former Rwandan régime were making military preparations and undertaking incursions into Rwanda: S/RES/997 (9 June 1995), preambular paragraph 5; S/RES/1011 (16 August 1995), preambular paragraph 7; S/RES/1013 (7 September 1995), preambular paragraph 5. See also the mandate of the International Commission of Inquiry established to investigate violations of the Rwandan sanctions: S/RES/1013 (7 September 1995), operative paragraph 1.

⁸ The Taliban is treated as a sub-State actor rather than an extra-State actor due to the fact that it remains integrally connected to, and operative in, Afghanistan.

State targets to date are Usama Bin Laden and Al Qaida, and their associates. Initially, the sanctions against Bin Laden and Al Qaida and their associates were connected to their activities in Afghanistan. In January 2002, however, the Security Council abolished the geographical nexus between Afghanistan and the Taliban/Al Qaida sanctions régime.

8.2.2 Targeting decision-makers

As noted by former Secretary-General Boutros-Boutros Ghali, sanctions tend to be a “blunt instrument”.⁹ Responding in part to a concern in respect of the unintended consequences of sanctions upon civilian populations,¹⁰ the Security Council has experimented with measures designed to ensure that its sanctions régimes have a more direct impact upon policy-makers. Examples of the types of tailored measures applied by the Council are targeted financial sanctions and travel restrictions.¹¹ Tailored measures have thus

⁹ S/1995/1 (25 January 1995): *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, paragraph 70 (“Sanctions, as is generally recognized, are a blunt instrument. They raise the ethical question of whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behaviour is unlikely to be affected by the plight of their subjects. Sanctions also always have unintended or unwanted effects”).

¹⁰ For more detailed discussion of the Council’s initiatives to minimise the unintended consequences of sanctions, see section 8.4, below.

¹¹ For further discussion of financial and travel sanctions, see Chapter 7, sections 7.1.3 and 7.2.3.

been employed as part of the sanctions régimes against Iraq,¹² Libya,¹³ the Bosnian Serbs,¹⁴ Haiti,¹⁵ UNITA,¹⁶ Sudan,¹⁷ Sierra Leone,¹⁸ the Taliban/Al Qaida¹⁹ and Liberia.²⁰

8.3 Defining the temporal application of sanctions

When crafting a sanctions régime, the Security Council has occasionally experimented with the temporal application of the sanctions to be applied. Traditionally, a decision by the Council to impose sanctions required States to implement the sanctions immediately and for an unspecified duration. In some of its sanctions régimes, however, the Council has begun to experiment with the temporal application of sanctions, both in terms of

¹² In the case of Iraq, the Council applied travel sanctions against Iraqi officials and military personnel who had obstructed the work of UNSCOM: S/RES/1137 (12 November 1997), operative paragraph 4.

¹³ In the case of Libya, travel sanctions were applied against Libyan nationals who had been involved in terrorist activities: S/RES/748 (31 March 1992), operative paragraph 6(c).

¹⁴ In the case of the Bosnian Serbs, travel sanctions were applied against Bosnian Serb authorities, officers of the Bosnian Serb forces, people providing support to the Bosnian Serb forces, and residents of Bosnian Serb-controlled areas who had themselves violated the sanctions against the Bosnian Serbs: S/RES/942 (23 September 1994), operative paragraph 14.

¹⁵ In the case of Haiti, travel sanctions were applied against officers of the Haitian military and police and their immediate families, major participants in the coup d'état of 1991 and illegal governments since the coup and their immediate families, and those employed by or acting on behalf of the Haitian military and their immediate families: S/RES/917 (6 May 1994), operative paragraph 3.

¹⁶ In the case of the sanctions against UNITA, travel and financial sanctions were imposed against UNITA officials and adult members of their immediate families: S/RES/1127 (28 August 1997), operative paragraphs 4(a), 4(b) (applying the travel sanctions); S/RES/1173 (12 June 1998), operative paragraph 11 (applying the financial sanctions).

¹⁷ In the case of Sudan, travel sanctions were imposed against Members of the Government of Sudan, Sudanese Government officials, and members of the Sudanese armed forces: S/RES/1054 (26 April 1996), operative paragraph 3(b).

¹⁸ In the case of Sierra Leone, travel sanctions were applied against the members of the military junta and the RUF and adult members of their immediate families: S/RES/1132 (5 July 2000), operative paragraph 5; S/RES/1171 (5 June 1998), operative paragraph 5.

¹⁹ Financial, travel and arms sanctions have been imposed against the Taliban, Usama Bin Laden and Al Qaida and their associates: S/RES/1333 (19 December 2000), operative paragraph 8(c); S/RES/1390 (16 January 2002), operative paragraphs 2(a), 2(b), 2(c).

²⁰ In the case of the second sanctions régime imposed against Liberia, travel sanctions have been imposed against senior members of the Liberian Government and armed forces and their spouses, and against individuals providing support to armed rebel groups in neighbouring States [S/RES/1343 (7 March 2001), operative paragraph 7(a)], as well as against individuals

when the sanctions enter into force and in terms of the length of time for which sanctions must be applied.

8.3.1 Time-delays

The Security Council has employed time-delays in respect of the entry into force of sanctions in eight of its sanctions régimes, including those against Libya,²¹ the Federal Republic of Yugoslavia (Serbia-Montenegro),²² the Bosnian Serbs,²³ Haiti,²⁴ UNITA,²⁵

found to have violated the arms embargo against Liberia [S/RES/1478 (6 May 2003), operative paragraph 28].

²¹ In connection with the sanctions régime against Libya, see: S/RES/748 (31 March 1992), operative paragraph 3 (providing that the sanctions would enter into force on 15 April 1992); S/RES/883 (11 November 1993), operative paragraph 2 (providing that the additional sanctions would enter into force on 1 December 1993). In the first of these instances, the Council did not explicitly provide that the sanctions would not come into force if Libya were to comply with the objectives of the sanctions régime before the date stipulated. In the second instance, however, it provided for the possibility that the additional sanctions might not enter into force if the Secretary-General were to report before the date of entry into force that Libya had complied with the requirements of the sanctions régime: see S/RES/883 (11 November 1993), operative paragraphs 2, 16.

²² See: S/RES/820 (17 April 1993), operative paragraphs 10, 11, (providing that the additional sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) outlined in resolution 820 (1993) would come into effect 9 days later, unless the Secretary-General were to report that the Bosnian Serb party had signed the peace plan and ceased its military attacks). Although the Council had already used a time-delay as part of the Libya sanctions régime, the use of the time-delay in connection with the Federal Republic of Yugoslavia (Serbia-Montenegro) constituted the first occasion on which a time-delay had clearly been used to provide the target with a window of time in which they could avoid falling subject to the additional sanctions.

²³ S/RES/820 (17 April 1993), operative paragraphs 10, 11 (providing that the sanctions against the Bosnian Serbs, contained in operative paragraph 12, would come into effect 9 days later, unless the Secretary-General were to report that the Bosnian Serbs had signed the peace plan and ceased its military attacks). Interestingly, the Council did not employ a time-delay in September 1994, when it subsequently strengthened the Bosnian Serb sanctions régime: see S/RES/942 (23 September 1994), operative paragraphs 6, 7, 11-15.

²⁴ See: S/RES/841 (16 June 1993), operative paragraphs 3, 4 (providing that the initial sanctions would come into force one week after the resolution, unless the Secretary-General reported before that time that the imposition of the sanctions was not warranted); S/RES/873 (13 October 1993), operative paragraph 1 (providing that the reimposition of sanctions would come into effect five days later, unless the Secretary-General were to report that the *de facto* authorities were implementing in full the agreement to reinstate the Government of President Aristide and had established the necessary measures to enable UNMIH to carry out its mandate); S/RES/917 (6 May 1994), operative paragraph 5 (providing that the comprehensive sanctions outlined in operative paragraphs 6-8 of that resolution would come into effect fifteen days later, unless the Secretary-General were to report that the Haitian military had taken the steps required of them under the Governor's Island Agreement).

Sudan,²⁶ the Taliban & Al Qaida,²⁷ and Liberia (in the second instance).²⁸ The rationale for utilising time-delays is generally to provide the target with a period of grace during which it can avoid falling subject to the sanctions by satisfying the conditions tied to the termination of sanctions. In some instances, however, the Council has not explicitly declared its readiness to prevent the entry into force of the sanctions upon the satisfaction of certain conditions.²⁹ It

²⁵ See, e.g.: S/RES/864 (15 September 1993), operative paragraph 17 (deciding that the sanctions would enter into force ten days later, unless the Secretary-General notified it that an effective cease-fire had been established and that agreement had been reached on the implementation of the Peace Accords and relevant Security Council resolutions); S/RES/1127 (28 August 1997), operative paragraph 7 (deciding that the sanctions would enter into force thirty-three days later, unless it were to decide, on the basis of a report by the Secretary-General, that UNITA had taken concrete and irreversible steps to comply with the obligations enunciated in that resolution); S/RES/1173 (12 June 1998), operative paragraph 14 (deciding that the sanctions would enter into force thirteen days later, unless it were to decide, on the basis of a report by the Secretary-General, that UNITA had fully complied by 23 June 1998 with all its obligations under that resolution).

It is noteworthy that, on two occasions, the Council extended the initial date for the application of sanctions, in response to what appeared to be positive developments on the ground. The date for the entry into force of the sanctions outlined in resolution 1127 (1997), initially set for 30 September 1997 (S/RES/1127 (28 August 1997), operative paragraph 7), was delayed for a period of thirty days: S/RES/1130 (29 September 1997), operative paragraph 2 (delaying the entry into force until 30 October 1997). The date for the entry into force of resolution 1173 (1998), initially set for 25 June 1998, was also delayed, this time by six days: S/RES/1176 (24 June 1998), operative paragraph. In both cases, the additional time seemed to be permitted in response to observations made by the Secretary-General relating to potential positive developments on the ground.

²⁶ S/RES/1054 (26 April 1996), operative paragraph 2 (deciding that the sanctions would enter into force on 10 May 1996 – two weeks after the adoption of the resolution); S/RES/1070 (16 August 1996), operative paragraph 4 (deciding that the additional sanctions would enter into force more than ninety days later, unless the Council had decided before then that Sudan had complied with the objectives of the sanctions).

²⁷ S/RES/1267 (15 October 1999), operative paragraph 3 (providing that the initial sanctions would enter into force on 14 November 1999, unless the Council had decided that the Taliban had fully complied with its obligations under the sanctions régime); S/RES/1333 (19 December 2000), operative paragraph 22 (providing that the modified sanctions would enter into force one month later). In subsequent modifications to the sanctions régime, however, the Council provided that the additional sanctions were to come into effect immediately. See, e.g., S/RES/1390 (16 January 2002), operative paragraphs 1, 2.

²⁸ S/RES/1343 (7 March 2001), operative paragraph 8 (deciding that the diamond and travel sanctions against Liberia would enter into force two months later, unless the Security Council were to determine that Liberia had complied with the objectives of the sanctions régime); S/RES/1478 (6 May 2003), operative paragraph 17 (deciding that the timber sanctions against Liberia were to come into effect two months later, unless the Council were to decide otherwise).

²⁹ See, e.g.: S/RES/748 (31 March 1992), operative paragraph 3 (providing simply that the sanctions against Libya would enter into force on 15 April 1992); S/RES/1054 (26 April 1996), operative paragraph 2 (deciding simply that the sanctions against Sudan would enter into force

is unclear what the rationale might be for employing time-delays in the absence of a desire to induce the early compliance of a target with the objectives of a sanctions régime, but one possibility is that the Council is mindful of granting States sufficient time to make the necessary arrangements to ensure that the sanctions will be effectively implemented once they enter into force.

In respect of a number of those sanctions régimes the Council has used a combination of immediate and time-delayed sanctions over the course of the régime, without blending the two in a particular decision applying or modifying sanctions. In the cases of Haiti and Liberia (in the second instance), however, the Council provided for the staggered application of sanctions, stipulating that some sanctions were to be effective immediately, whilst others would enter into force after a time-delay.³⁰

8.3.2 Time-limits

The Security Council has employed time-limits in connection with six of its sanctions régimes. The Council first experimented with a time-limit in May 2000, as part of the

on 10 May 1996 – two weeks after the adoption of the resolution); S/RES/1333 (19 December 2000), operative paragraph 22 (providing simply that the modified sanctions against the Taliban, Bin Laden and Al Qaida, would enter into force one month later).

³⁰ In connection with the Haiti sanctions régime, see: S/RES/917 (6 May 1994), operative paragraphs 2, 3 (stipulating that the aviation and travel sanctions were to be applied “without delay”), operative paragraph 5 (providing that the comprehensive sanctions outlined in operative paragraphs 6-8 of that resolution would come into effect fifteen days later, unless the Secretary-General were to report that the Haitian military had taken the steps required of them under the Governor’s Island Agreement).

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 8 (deciding that the diamond and travel sanctions would enter into force two months later), operative paragraph 9 (deciding that the arms sanctions were established for an initial period of 14 months, without referring to any time-delay. Thus, the implication was that the sanctions were to come into effect immediately); S/RES/1478 (6 May 2003), operative paragraph 17 (deciding that the timber sanctions were to come into effect two months later), 28 (imposing the additional travel sanctions without specifying any time-delay, thus implying that the travel sanctions were to enter into force immediately).

sanctions régime against Ethiopia and Eritrea. The sanctions were established for a period of twelve months,³¹ at the end of which the Council did not decide to extend the sanctions any further and they therefore expired.³² Since then the Council has employed time-limits as part of its sanctions régimes against Sierra Leone,³³ the Taliban and Al Qaida,³⁴ Liberia (in the second instance),³⁵ certain actors in the DRC,³⁶ and Liberia (in the third instance).³⁷

³¹ S/RES/1298 (17 May 2000), operative paragraph 16 (deciding that the sanctions were established for twelve months and that the Council would decide at the end of that period whether Ethiopia and Eritrea had complied with the objectives of the sanctions régime and thus whether to extend the sanctions).

³² On 15 May 2001, the Council adopted a presidential statement, confirming that the sanctions régime would indeed expire the following day: S/PRST/2001/14 (15 May 2001): *Presidential statement of 15 May 2001*. In that statement, the Council emphasized the importance of the Algiers Peace Agreement, which the parties had signed on 12 December 2000 (S/2000/1183 (13 December 2000), annex), recognised that the signing of the Algiers Agreement was consistent with the objectives of the Ethiopia/Eritrea sanctions régime, and stated that, under the existing circumstances, it had not extended the sanctions beyond the expiration date of 16 May 2001. The Council urged the parties, however, to focus their efforts on reconstruction, development and reconciliation rather than on weapons procurement and other military activities, and expressed the intention take appropriate measures if the situation between Eritrea and Ethiopia again threatened regional peace and security.

³³ The Council incorporated a time-limit as part of its Sierra Leone sanctions régime when it imposed diamond sanctions for an initial period of eighteen months: S/RES/1306 (5 July 2000), operative paragraphs 1, 5, 6. The sanctions were subsequently extended on two occasions, for periods of eleven and six months (S/RES/1385 (19 December 2001), operative paragraph 3; S/RES/1446 (4 December 2002), operative paragraph 2), before ultimately expiring in June 2003. See: SC/7778 (5 June 2003): *Press statement on the Sierra Leone Diamond Embargo by the President of the Security Council* (noting that the members of the Council had agreed not to renew the diamond sanctions, in light of the Government of Sierra Leone's increased efforts to manage its diamond industry and ensure proper control over diamond areas, and in light of its full participation in the Kimberley Process).

³⁴ The Council incorporated a time-limit as part of its sanctions régime against the Taliban and Al Qaida in December 2000, when it decided that the additional measures against the Taliban would terminate after twelve months, unless it (the Council) were to decide otherwise: S/RES/1333 (19 December 2000), operative paragraph 23. In its subsequent resolutions, however, the Council has not incorporated time-limits, noting instead that it would review the sanctions after twelve months and decide how to improve them. See, e.g., S/RES/1390 (16 January 2002), operative paragraph 3; S/RES/1455 (17 January 2003), operative paragraphs 1, 2; S/RES/1526 (30 January 2004), operative paragraph 3.

³⁵ In connection with the sanctions régime against Liberia (in the second instance), the Council has outlined time-limits for most of the sanctions imposed. The arms sanctions were applied for an initial period of fourteen months (S/RES/1343 (7 March 2001), operative paragraphs 5, 9), which has subsequently been extended for two further periods of twelve months (S/RES/1408 (6 May 2002), operative paragraph 5; S/RES/1478 (6 May 2003), operative paragraph 10). The diamond and travel sanctions, which came into effect two months after the application of the arms sanctions, were applied for an initial period of twelve months (S/RES/1343 (7 March 2001), operative paragraphs 6, 7, 8), which has subsequently been extended for two further periods of twelve months (S/RES/1408 (6 May 2002), operative paragraph 5; S/RES/1478 (6 May 2003),

8.4 Addressing the unintended consequences of sanctions

As noted in Chapter 1, U.N. sanctions have received considerable criticism due to the negative consequences that have resulted from their application both for civilian populations living in a target State, as well as for States that would normally benefit from engaging in trade or other relations with the target. This section outlines the manner in which the Council has sought to address unintended consequences both for civilian populations and for third States.³⁸

8.4.1 Security Council action to address the humanitarian impact of sanctions upon civilian populations

The United Nations has been quite sensitive to the charge that sanctions have brought suffering upon civilian populations.³⁹ For its part, the Security Council and its

operative paragraph 10). The timber sanctions, have been applied for an initial period of ten months, beginning on 6 July 2003 (S/RES/1478 (6 May 2003), operative paragraph 17). Interestingly, the Council did not set a time-limit for the additional travel sanctions applied in May 2003: S/RES/1478 (6 May 2003), operative paragraph 28. It is questionable, however, whether the relevant provisions in and of themselves would result in the termination of the sanctions at the end of the time-period specified. The provisions state that the relevant sanctions would terminate after the stipulated period if the Council were to decide that the Liberian Government had complied with the conditions of the sanctions régime.

³⁶ S/RES/1493 (28 July 2003), operative paragraph 20 (applying the arms sanctions for an initial period of 12 months).

³⁷ S/RES/1521 (22 December 2003), operative paragraph 18 (deciding that the Liberia III sanctions were established for 12 months). Interestingly, the Council did not provide for an express time-limit when it imposed subsequent financial sanctions as part of the same sanctions régime, noting instead that the measures would be reviewed within 12 months. See: S/RES/1532 (12 March 2004), operative paragraphs 1 (imposing financial sanctions), 5 (deciding to review the financial sanctions at least once a year).

³⁸ The focus of discussion here is upon actual action taken by the Security Council to address the unintended consequences of sanctions. For policy recommendations suggesting how the performance of sanctions might be modified to minimise unintended consequences, see Chapters 11 and 12.

³⁹ See, for example: S/1995/1 (25 January 1995): *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, paragraph 70 ("Sanctions, as is generally recognized, are a blunt instrument. They raise the ethical question of whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behaviour is unlikely to be affected by the plight of their subjects. Sanctions also always have unintended or unwanted effects"); and the statement by senior United Nations official Lakhdar Brahimi in

sanctions-related subsidiary bodies have noted that the aim of sanctions is not to harm civilian populations.⁴⁰ The Council and its permanent members have also issued a number of statements to the effect that more must be done to minimize the humanitarian impact of sanctions.⁴¹ In terms of concrete action, the Security Council has sought to address the negative humanitarian consequences of sanctions upon civilian populations in three main ways. First, the Council has outlined humanitarian exemptions from comprehensive and complex sanctions régimes. Second, it has moved towards targeted, “smart sanctions”. Third, it has begun to request more frequent assessments of the humanitarian and socio-economic impact of sanctions.

i. The exemptions process

As already noted in Chapter 7, the Security Council has outlined humanitarian exemptions from each of the comprehensive sanctions régimes applied to date, articulating particular exempt items, as well as classes of supplies that can be exempt with the approval

his foreword to: Gibbons, Elizabeth D., *Sanctions in Haiti: human rights and democracy under assault* (1999) Praeger, Westport, CT, x (“The dilemma UN officials face [with respect to sanctions régimes] is a familiar one: they, of course, wholeheartedly support the international community’s agenda aimed at restoring and promoting democracy and are professionally bound to implement the decisions of the Organization that employs them. But more and more there is uneasiness among UN staff because, unfortunately, sanctions do produce extensive and lasting damage that affects a majority of the innocent population rather than the intended targets”).

⁴⁰ For an example of a statement by the Council itself, see: S/PRST/2000/12 (7 April 2000): *Presidential statement of 7 April 2000*, paragraph 17. For similar statements by the Council’s sanctions-related subsidiary bodies, see: S/1999/644 (4 June 1999), annex: *Report on the visit by the Chairman of the 864 Committee to Central and Southern Africa, May 1999*, paragraph 18; S/1999/829 (28 July 1999), annex: *Report on the visit by the Chairman of the 864 Committee to Europe and participation in the seventieth ordinary session of the Council of Ministers of the Organization of African Unity, July 1999*, paragraph 23.

⁴¹ See, e.g., S/1995/300 (13 April), annex: *Humanitarian impact of sanctions* (containing a non-paper by the five permanent members of the Council), paragraph 1; S/1999/92 (29 January 1999): *Note by the President of the Security Council: Work of the Sanctions Committees*, paragraphs 1, 9, 10 and 11.

of the relevant Sanctions Committee.⁴² The Council has also provided for exemptions from financial sanctions for the purchase of humanitarian items and to finance pensions, the provision of basic services, payments on the ground of humanitarian need, and “basic” or “extraordinary” personal expenses of individuals subject to financial sanctions.⁴³ The Council has also expressed its support, via the issuance of a Presidential Note, for the idea that food, pharmaceuticals, medical supplies, and basic agricultural and medical equipment should be exempt from any sanctions régime.⁴⁴ In that note it also expressed the view that consideration should be given to drawing up lists of items that should be excluded from sanctions régimes and it recognized that civilian populations in target States should have access to appropriate resources and procedures for financing humanitarian imports.⁴⁵

Towards the end of the comprehensive Iraq sanctions régime’s tenure, the Security Council also refined the exemptions process in a way that might provide a positive precedent, should comprehensive sanctions again be employed. In May 2002, the Council adopted a “Goods Review List” (“GRL”).⁴⁶ The GRL contained an exhaustive list of potential “dual-use” items, the supply to Iraq of which must first be approved via a process which involves careful consideration of the items by the United Nations Monitoring Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA), which then recommended the approval or refusal of the application by the

⁴² See also Chapter 8, as well as the discussion of the element of consistency earlier in this chapter.

⁴³ See also Chapter 7.

⁴⁴ S/1999/92 (29 January 1999): *Note by the President of the Security Council: Work of the Sanctions Committees*, paragraph 16.

⁴⁵ *Ibid.*

⁴⁶ The GRL was adopted by S/RES/1409 (14 May 2002), operative paragraph 2. It was refined by S/RES/1454 (30 December 2002), operative paragraph 1.

661 Committee.⁴⁷ Anything that was not on the list was considered to be exempt from sanctions, thus requiring simple notification to the Committee. After the introduction of the GRL process the flow of exempted goods and commodities to Iraq under the Oil-for-Food Programme increased substantially.⁴⁸

ii. Smart sanctions

As charted in Chapters 5 and 7, there has been an evolution in the Security Council's practice towards "smart" or "targeted" sanctions.⁴⁹ The Council has thus sought to target decision-makers more directly, through the employment of individual travel and financial sanctions. It has also focused its sanctions régimes increasingly upon strategic goods, prohibiting particular items – such as arms, diamonds and timber – the export or import of which is perceived to contribute to the relevant threat to the peace.

iii. Humanitarian impact assessment

The Council has requested the Secretary-General and sanctions-related subsidiary bodies to undertake a number of monitoring and evaluation activities in relation to the humanitarian situation in areas subject to sanctions. The Secretary-General has thus been requested to report on the humanitarian situation in general in a target State,⁵⁰ to appoint a

⁴⁷ For the GRL itself, see: S/2002/515 (20 May 2002); and S/RES/1454 (30 December 2002), Annex A. For the procedures relating to the application of the GRL, see: S/RES/1409 (14 May 2002), attachment; S/RES/1454 (30 December 2002), Annex B.

⁴⁸ For details of the improvements resulting from the introduction of the GRL, see the report of the Secretary-General dated 12 November 2002: S/2002/1239 (12 November 2002).

⁴⁹ For monographs studying this evolution, see: *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden; Cortright, David & Lopez, George A. (eds), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD.

⁵⁰ For the Iraq sanctions, see: S/RES/666 (13 September 1990), operative paragraphs 3-5.

For the Haiti sanctions, see: S/RES/917 (6 May 1994), operative paragraph 16.

For the Ethiopia and Eritrea sanctions, see: S/RES/1298 (17 May 2000), operative paragraph 15.

committee of experts to report on the humanitarian situation in a target State,⁵¹ and to report on the actual or potential humanitarian implications of sanctions within a target State.⁵² Sanctions-related subsidiary bodies, for their part, have been tasked with: reporting on the humanitarian needs of the civilian population within a target State;⁵³ determining whether humanitarian circumstances had arisen, thus requiring the provision of exemptions for food-stuffs;⁵⁴ reporting on the potential and actual economic, humanitarian and social impact of sanctions;⁵⁵ and making recommendations to the Council on ways to limit unintended effects of sanctions on a civilian population.⁵⁶

8.4.2 Security Council action to address the impact of sanctions upon third States

As noted in Chapter 4, the framers of the United Nations Charter implicitly recognised the inequity inherent in requiring a greater sacrifice of some States than others by

⁵¹ For the Iraq sanctions, see: S/RES/1302 (8 June 2000), operative paragraph 18.

⁵² For the Afghanistan/Taliban/Al Qaida sanctions, see: S/RES/1333 (19 December 2000), operative paragraph 15(d). The Secretary-General subsequently submitted four reports to the Council in 2001 on the humanitarian implications of the sanctions: S/2001/241 (20 March 2001); S/2001/695 (13 July 2001); S/2001/1086 (19 November 2001); and S/2001/1215 (18 December 2001). In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 13(a); S/RES/1478 (6 May 2003), operative paragraph 19. The Secretary-General has thus submitted the following reports: S/2001/939 (5 October 2001); and S/2003/793 (5 August 2003).

⁵³ In the Iraq case the Council established three panels to explore different aspects of the situation in Iraq, the second of which would address the humanitarian needs of the Iraqi people. See: S/1999/100: *Note by the President of the Security Council* (30 January 1999) (deciding to establish). The Humanitarian Panel reported in: S/1999/356 (30 March 1999), Annex II.

⁵⁴ In the Iraq case, the Council made such a request of the 661 Committee in: S/RES/666 (13 September 1990), operative paragraphs 1, 5.

⁵⁵ The Council requested the 1267 Committee to undertake such a task in relation to the Taliban & Al Qaida sanctions régime. See: S/RES/1267 (15 October 1999), operative paragraph 6(c). With respect to the second Liberia sanctions régime, the Council made such a request of the Liberia Panel of Experts on multiple occasions. See: S/RES/1395 (27 February 2002), operative paragraph 4; S/RES/1478 (6 May 2003), operative paragraph 25(c).

⁵⁶ The Council made such a request of both the 1343 Committee and the Liberia Panel of Experts in connection with the second Liberian sanctions régime. See: S/RES/1343 (7 March 2001), operative paragraph 14(g) (aimed at the 1343 Committee); S/RES/1478 (6 May 2003), operative paragraph 25(c) (aimed at the Liberia Panel of Experts).

providing such States the right, under Article 50, to consult the Security Council in respect of special economic problems resulting from the implementation of Council-mandated preventive or enforcement measures.⁵⁷ States have consulted the Security Council under Article 50 concerning the economic consequences experienced as a result of implementing the sanctions régimes against Southern Rhodesia, Iraq, the Federal Republic of Yugoslavia (Serbia-Montenegro) and Haiti. In general, the Council has referred Article 50 requests to subsidiary bodies such as Sanctions Committees and technical missions for further consideration.⁵⁸

⁵⁷ Article 50, United Nations Charter.

⁵⁸ In the case of Southern Rhodesia, the Council tasked technical missions to explore the issue of special assistance for Zambia and Botswana. See: S/RES/326 (2 February 1973), operative paragraph 9 (regarding Zambia); S/RES/403 (14 January 1977), operative paragraph 6 (regarding Botswana). In the Iraq, Libya, Federal Republic of Yugoslavia (Serbia-Montenegro) and Haiti instances, the Council requested Sanctions Committees to examine requests for special assistance and to make appropriate recommendations to the Council in connection with its sanctions régimes against. For Iraq, see: S/RES/669 (24 September 1990), preambular paragraph 4. For Libya, see: S/RES/748 (31 March 1992), operative paragraph 9(f); S/RES/883 (11 November 1993), operative paragraph 10. For the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/843 (18 June 1993), operative paragraph 2. For Haiti, see: S/RES/917 (6 May 1994), operative paragraph 14(g).

In the cases of Iraq and the Federal Republic of Yugoslavia (Serbia-Montenegro), the 661 and 724 Committees took the step of establishing Article 50 Working Groups to focus on the issue of special assistance. For a brief description of the activities of the 661 Working Group, see: S/1996/700 (26 August 1996), annex: *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, paragraph 105. For a tangential reference to the 724 Working Group, see: S/1996/946 (15 November 1996), annex: *Final Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia*, paragraph 42.

Where those subsidiary bodies have found such requests to be valid,⁵⁹ the Council's typical response has been to appeal, either directly (in the form of resolutions and presidential statements) or indirectly (by requesting the Secretary-General to make such an appeal), to all States to provide technical, financial and material assistance to the country concerned, and to invite the competent organs and specialized agencies of the United Nations system, including the international financial institutions and regional development banks, to review their programmes of assistance to the country in question, with a view to alleviating those hardships.⁶⁰

⁵⁹ For examples of such recommendations with respect to the Iraq sanctions, see: S/21786 (18 September 1990): Special report to the Security Council concerning the application of Jordan for special assistance; S/22021 & Add.1 & Add.2 (19 and 21 December 1990, and 19 March 1991): Recommendations of the 661 Committee concerning the applications for special assistance of Bangladesh, Bulgaria, Czechoslovakia, Djibouti, India, Lebanon, Mauritania, Pakistan, Philippines, Poland, Romania, Seychelles, Sri Lanka, Sudan, Syrian Arab Republic, Tunisia, Uruguay, Viet Nam, Yemen and Yugoslavia. For recommendations relating to the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/26040 & Add. 1 & Add.2 (2 July, 4 August and 10 December 1993): Recommendations of the 724 Committee concerning the applications for special assistance of Albania, Bulgaria, the former Yugoslav Republic of Macedonia, Hungary, Romania, Slovakia, Uganda and Ukraine.

⁶⁰ The Council has appealed directly to States and international organizations regarding the provision of special assistance in the Southern Rhodesian and Iraq cases. In the Southern Rhodesian case, see: S/RES/253 (29 May 1968) operative paragraph 15 (concerning Zambia); S/RES/277 (18 March 1970), operative paragraph 16 (concerning Zambia); S/RES/329 (10 March 1973), operative paragraphs 3 and 4 (concerning Zambia); S/RES/386 (17 March 1976), operative paragraphs 4, 5 (concerning Mozambique); S/RES/411 (30 June 1977), operative paragraphs 9, 10 (concerning Mozambique); S/RES/406 (25 May 1977), operative paragraphs 5, 7 (concerning Botswana). In the Iraqi case, see: S/22508 (29 April 1991): Presidential statement of 29 April 1991 (making a "solemn appeal" on behalf of the members of the Security Council to States, international financial institutions and United Nations bodies to respond positively and speedily to the recommendations of the 661 Committee for assistance to countries confronted with special economic problems arising from the implementation of sanctions).

The Council has made indirect appeals with respect to the sanctions régimes against Southern Rhodesia, Iraq and the Federal Republic of Yugoslavia (Serbia-Montenegro). For Southern Rhodesia, see: S/RES/386 (17 March 1976), operative paragraph 6 (requesting the Secretary-General, in collaboration with the appropriate organizations of the United Nations system, to organize, with immediate effect, all forms of financial, technical and material assistance to Mozambique). For Iraq, see: S/21826, 22033 and 22398 (24 September and 21 December 1990 and 21 March 1991): Letters dated 24 September and 21 December 1990 and 21 March 1991 from the President of the Security Council addressed to the Secretary-General, endorsing the recommendations of the 661 Committee concerning the applications for special assistance of Bangladesh, Bulgaria, Czechoslovakia, Djibouti, India, Lebanon, Mauritania, Pakistan, Philippines, Poland, Romania, Seychelles, Sri Lanka, Sudan, Syrian Arab Republic, Tunisia, Uruguay, Viet Nam, Yemen and Yugoslavia. For the Federal Republic of Yugoslavia (Serbia-

Montenegro), see: S/26056, 26282 and 26905: (6 July, 9 August and 20 December 1993): Letters dated 6 July, 9 August and 20 December 1993 from the President of the Security Council addressed to the Secretary-General, endorsing the recommendations of the 724 Committee concerning the applications for special assistance of Albania, Bulgaria, the former Yugoslav Republic of Macedonia, Hungary, Romania, Slovakia, Uganda and Ukraine.

9. *Bestowing responsibility upon subsidiary bodies for sanctions administration and monitoring*

When the Security Council applies sanctions, the primary responsibility for implementing the sanctions falls upon States. In order to ensure that States do in fact implement sanctions, however, the Council has bestowed additional responsibilities for the implementation, administration, monitoring and enforcement of sanctions to a range of actors. Those actors fall into two broad categories: subsidiary bodies established by the Council in order to undertake administrative, monitoring and analytical tasks; and other international actors, upon whom the Council has bestowed responsibilities for monitoring and enforcement of sanctions. Discussion in this and the next Chapter explores these two broad categories. In this Chapter, analysis explores the various sanctions-related subsidiary organs created by the Council, including Sanctions Committees, a Working Group on Sanctions, Panels of Experts, Monitoring Mechanisms and Security Council missions.

As noted in Chapter 4, the Security Council possesses the power to create subsidiary organs by virtue of Article 29 of the United Nations Charter, which provides that it may establish “such subsidiary organs as it deems necessary for the performance of its functions.”¹ Further authority is derived from rule 28 of the Council’s provisional rules of procedure, which provides that “the Security Council may appoint a commission or committee or a rapporteur for a specified question.”² In order to facilitate the implementation of sanctions, the Council has established a number of different types of subsidiary organs,

¹ Article 29 of the U.N. Charter.

² S/96/Rev.7 (December 1982): *Provisional Rules of Procedure of the Security Council*, Rule 28. The Council has consistently referred to Rule 28 of the provisional rules of procedure when creating Sanctions Committees.

including Sanctions Committees, Disarmament Commissions and Commissions of Inquiry, bodies of experts, Monitoring Mechanisms and United Nations Operations.³

9.1 Sanctions Committees

Sanctions Committees have been the most common form of subsidiary organ established to facilitate the administration, monitoring and implementation of sanctions. The Security Council has established nineteen distinct Sanctions Committees.⁴ The Committees, which come to be known colloquially both by the name of the sanctions régime with which they are connected and by the name of the resolution by which they were created, have collectively undertaken responsibilities for the administration of all but the sanctions régime against the Sudan. In all but one case they have undertaken responsibilities focused solely upon one particular sanctions régime.⁵ Twelve of the Sanctions Committees were established by the same resolution that initiated a sanctions régime.⁶ Six of the remaining

³ The Security Council does not always invoke Article 29 or Rule 28 when establishing a subsidiary organ. Moreover, its practice has been inconsistent in terms of the language used to establish such entities. Thus, an entity might even be considered a subsidiary organ where the Council “welcomes” or “endorses” its establishment by the Secretary-General. In relation to the various sanctions-related subsidiary organs, the Council has tended to invoke Rule 28 in respect of Sanctions Committees, but not in respect of Panels of Experts or Monitoring Mechanisms. In respect of the Panels and Mechanisms, the Council has sometimes decided to establish them directly, whilst sometimes requesting the Secretary-General to establish them. In either instance, however, the entities can be considered subsidiary organs of the Council. For further discussion of the question of subsidiary organs, see: Simma, Bruno (ed.), *The Charter of the United Nations: a Commentary* (2002: 2nd edition) Oxford UP, 539-63; Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council* (3rd ed. 1998) Clarendon Press, Oxford, 333-78.

⁴ For a list of all of the Security Council’s Sanctions Committees, along with references to the provisions outlining their mandates, see Table D in the Appendices.

⁵ The former Yugoslavia Committee (“the 724 Committee”), which was initially established in connection with the former Yugoslavia sanctions régime, subsequently assumed responsibilities for the administration of the sanctions régimes against the Federal Republic of Yugoslavia (Serbia-Montenegro) and the Bosnian Serbs.

⁶ Those twelve Committees were established with respect to Iraq (“the 661 Committee”), Libya (“the 748 Committee”), Haiti (“the 841 Committee”), UNITA (“the 864 Committee”), Rwanda (“the 918 Committee”), Sierra Leone (“the 1132 Committee”), the Federal Republic of Yugoslavia (“the 1160 Committee”), the Taliban & Al Qaida (“the 1267 Committee”), Ethiopia

seven Committees were established to undertake responsibilities in respect of sanctions régimes that had already been initiated, but in connection with which no Sanctions Committee had previously been established.⁷ The remaining Sanctions Committee was established to succeed a dissolved Committee.⁸

9.1.1 Composition

The composition of Sanctions Committees has evolved slightly since the first Sanctions Committee was established to oversee the sanctions régime against Southern Rhodesia. The Southern Rhodesian Sanctions Committee initially consisted of representatives of seven of the States Members of the Security Council, with a fixed Chairman.⁹ From the end of March 1969, the Chairmanship rotated every two months, in alphabetical order.¹⁰ Then, from October 1970, the Committee was expanded to include a representative of each State Member of the Security Council, with the chairmanship of the Committee rotating each month in accordance with the Presidency of the Council.¹¹ A further adjustment was made to the organization of the Committee's work on March 1972,

and Eritrea ("the 1298 Committee"), Liberia II ("the 1343 Committee"), Liberia III ("the 1521 Committee") and Weapons of Mass Destruction ("the 1540 Committee").

⁷ Among those Committees were those relating to: Southern Rhodesia ("the 253 Committee"), South Africa ("the 421 Committee"), the former Yugoslavia ("the 724 Committee"), Somalia ("the 751 Committee"), Liberia (in the first instance: "the 985 Committee") and the DRC ("the 1533 Committee").

⁸ The 1518 Committee was established to succeed the 661 Committee, which had been dissolved. Like the 661 Committee, it undertakes responsibilities relating to the administration of the Iraq sanctions régime.

⁹ S/8697 (31 July 1968). The initial Chairman was India, with the other members of the Committee being Algeria, France, India, Paraguay, the USSR, the United Kingdom and the United States. India was replaced as Chairman at the end of 1968, when its term on the Council expired, by another non-permanent member – Pakistan. See: Gowlland-Debbas, Vera, *Collective Responses to Illegal Acts in International Law: United Nations Action in the Question of Southern Rhodesia* (1990) Martinus Nijhoff, Dordrecht, 607.

¹⁰ Gowlland-Debbas, *Collective Responses*, *ibid*, 607.

¹¹ S/9951 [Official Records of the Security Council, Twenty-fifth Year, Supplement for July, August and September 1970: S/9951].

when the President of the Security Council issued a note stating that the Chairmanship of the Committee would subsequently rotate on a one-year basis and that the Chairman and two Vice-Chairmen would be elected at the beginning of each year.¹²

The composition of each of the subsequent Sanctions Committees has followed the model that evolved through the experience of the Southern Rhodesian Sanctions Committee. Each Committee has thus consisted of a representative of each of the States Members of the Security Council, leading them to be described as “Committees of the whole.”¹³ In addition, the Chairmanship and Vice-Chairmanship of each Sanctions Committee have rotated annually, on the basis of an informal election within the Council at the end of each calendar year. In practice, the positions of Chair and Vice-chair have almost exclusively been filled by representatives of non-permanent members of the Council. Thus, Sanctions Committee office-bearers have tended to serve in their positions for a maximum of two years, reflecting the two-year term of their delegation on the Security Council.

9.1.2 Mandates

As Sanctions Committees are *ad hoc* entities, their mandates can vary quite markedly. In order to ascertain the mandate of a particular Sanctions Committee, it is necessary to analyse both the resolution in which the Committee was established, as well as any subsequent resolutions that either modify the scope of the sanctions régime for which the Committee has responsibility or that add to the Committee’s existing collection of tasks. Although the mandates of most Committees exhibit particular characteristics that are not shared by other Committees, the Council has tended to delegate a number of core

¹² S/10578 (29 March 1972) [Official Records of the Security Council, Twenty-seventh Year, Supplement for January, February and March 1972: S/10578].

responsibilities to most, if not all, Committees. Among the more generic responsibilities delegated to Sanctions Committees, however, have been receiving reports from Member States on actions taken to implement sanctions, and reporting to the Council, with observations and recommendations on the implementation of the relevant sanctions régime.¹⁴

Sanctions Committees have also been requested or required to undertake a range of additional duties, including: reporting on specific matters; administering exemptions from sanctions régimes; considering requests for special assistance under Article 50 of the Charter; performing tasks connected with sanctions monitoring; taking action to improve sanctions implementation; liaising with other sanctions-related subsidiary organs of the Security Council; refining their own working methods; administering the lists of those subject to targeted sanctions; and considering the humanitarian impact of sanctions.

i. Reporting activities

As part of the more specific reporting activities, Committees have been requested or required to undertake the following duties: examining reports of the Secretary-General on the implementation of sanctions;¹⁵ reporting to the Council on action which could be taken to

¹³ Bailey & Daws, *The Procedure of the Security Council*, above note 3, 365.

¹⁴ In the initial Security Council sanctions committee-creating resolution, in relation to the regime imposed against Southern Rhodesia, the Council established a general duty to report to the committee with observations relating to the areas of its mandate: S/RES/253 (29 May 1968), operative paragraph 20. Later in the paragraph the Council referred to the committee's "duty" to report: operative paragraph 20 (b). This duty has applied to each subsequent sanctions committee.

¹⁵ The Council has requested Sanctions Committees to undertake such a task in respect of the sanctions régimes against Southern Rhodesia, South Africa and Iraq.

In connection with the sanctions régime against Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 20(a).

In connection with the sanctions régime against South Africa, see: S/RES/421 (9 December 1977), operative paragraph 1(a).

In connection with the sanctions régime against Iraq, see: S/RES/661 (6 August 1990), operative paragraph 6(a).

address the refusal of States to implement sanctions;¹⁶ reporting on proposals for extending the scope and effectiveness of the sanctions;¹⁷ reporting on the possible application of further measures under Article 41;¹⁸ and providing oral reports to the Council via the relevant Committee Chairman.¹⁹

ii. The administration of exemptions

Among the tasks related to the administration of sanctions exemptions, Committees have assumed the following responsibilities: considering applications for exemptions from a sanctions régime;²⁰ considering applications for exemptions from the prohibition upon the

¹⁶ The Council requested that the Southern Rhodesian Sanctions Committee undertake such a task. See: S/RES/320 (29 September 1972), operative paragraphs 4 and 5. The Council requested that the Committee submit this report no later than 31 January 1973. The Committee was late in submitting the report, however, as the Council's subsequent requests to it to expedite its preparation of that report attest: see, e.g., S/RES/326 (2 February 1973), operative paragraph 8; S/RES/328 (10 March 1973), operative paragraph 6.

¹⁷ The Council has requested Sanctions Committees to undertake such a task in respect of its sanctions régimes against Southern Rhodesia, South Africa, and Liberia (in the second instance).

In connection with the sanctions régime against Southern Rhodesia, see: S/RES/320 (29 September 1972), operative paragraphs 4 and 5. The Council requested that the Committee submit this report no later than 31 January 1973. The Committee was late in submitting the report, however, as the Council's subsequent requests to it to expedite its preparation of that report attest: see, e.g., S/RES/326 (2 February 1973), operative paragraph 8; S/RES/328 (10 March 1973), operative paragraph 6; S/RES/445 (8 March 1979), operative paragraph 8.

In connection with the sanctions régime against South Africa, see: S/RES/421 (9 December 1977), operative paragraph 1(b); S/RES/473 (13 June 1980), operative paragraph 11; S/RES/591 (28 November 1986), operative paragraph 13.

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 14(g).

¹⁸ The Council requested that the Southern Rhodesian Sanctions Committee undertake such a task. See: S/RES/409 (27 May 1977), operative paragraph 3.

¹⁹ The Council requested the Chairman of the 1267 Committee to undertake such a task in relation to the Taliban and Al Qaida sanctions régime. See: S/RES/1455 (17 January 2003), operative paragraph 9 (requesting that the Chairman of the 1267 Committee report orally every 90 days on the work of the Committee and the Monitoring Group and on the reports received from States on steps taken to implement the sanctions), operative paragraph 14 (requesting that the Chairman of the 1267 Committee provide the Council by 1 August 2003 and by 15 December 2003 detailed oral assessments of Member State implementation of the sanctions, with a view to recommending further measures for Council consideration to improve the sanctions).

²⁰ The Council has requested Sanctions Committees to undertake such a task in respect of its sanctions régimes against Iraq, Somalia, Libya, the Federal Republic of Yugoslavia (Serbia-Montenegro), the Bosnian Serbs, Haiti, UNITA, Rwanda, Sierra Leone, the Taliban and Al

Qaida, Ethiopia and Eritrea and Liberia (in the second instance). In connection with Iraq, see: S/RES/687 (3 April 1991), operative paragraph 20. In connection with Somalia, see: S/RES/1356 (19 June 2001), operative paragraph 4. In connection with Libya, see: S/RES/748 (31 March 1992), operative paragraph 9(e) (requesting that the 748 Committee consider and decide expeditiously upon any application by States for the approval of flights on grounds of significant humanitarian need). In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 13(e) (requesting the 724 Committee to consider and approve guidelines for the trans-shipment through the Federal Republic of Yugoslavia (Serbia-Montenegro) of exempted items), operative paragraph 13(f) (requesting the 724 Committee to consider and decide expeditiously upon applications for exemptions from the aviation sanctions); S/RES/787 (16 November 1992), operative paragraph 9 (requesting the 724 Committee to consider, on a case-by-case basis, applications for exemptions to the ban on transshipment of particular goods under resolution 787 (1992)); S/RES/820 (17 April 1993), operative paragraph 22(b) (requesting the 724 Committee to consider, on a case-by-case basis under the no-objection procedure, applications for exemptions from the sanctions for the importation of essential humanitarian supplies that were not medical supplies or foodstuffs), operative paragraph 22(c) (requesting the 724 Committee to authorize limited transshipments through the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro)), operative paragraph 27 (requesting the 724 Committee to consider, on a case-by-case basis, applications for exemptions from the financial sanctions for the provision of services for humanitarian or other exceptional purposes), operative paragraph 28 (requesting the 724 Committee to consider, on a case-by-case basis, applications for exemptions from the prohibition on commercial maritime traffic entering the territorial sea of the Federal Republic of Yugoslavia (Serbia and Montenegro)). In connection with the Bosnian Serbs, see: S/RES/942 (23 September 1994), operative paragraph 7(ii)(b) (requesting the 724 Committee to decide upon applications for exemptions from the sanctions for the provision of commodities or products for essential humanitarian needs), operative paragraph 13 (requesting the 724 Committee to receive and process, on a case-by-case basis, applications for exemptions from the sanctions for the provision of services necessary for humanitarian or other exceptional purposes), operative paragraph 15 (requesting the 724 Committee to receive and process, on a case-by-case basis, applications for exemptions from the prohibition upon the movement of commercial riverine traffic). In connection with Haiti, see: S/RES/841 (16 June 1993), operative paragraph 10(d) (requesting the 841 Committee to consider and decide expeditiously upon requests for the imports of petroleum and petroleum products for essential humanitarian needs); S/RES/917 (6 May 1994), operative paragraph 14(e) (requesting the 841 Committee to decide expeditiously upon applications by States for exemptions from the aviation sanctions). In connection with UNITA, see: S/RES/1127 (28 August 1997), operative paragraph 11 (b) (requesting that the 864 Committee decide upon and give favourable consideration to requests for the exemptions from the sanctions outlined in the resolution); S/RES/1173 (12 June 1998), operative paragraph 13 (requesting that the 864 Committee authorize, on a case-by-case basis and under the no-objection procedure, exemptions from the additional sanctions for verified medical and humanitarian purposes). In connection with Rwanda, see: S/RES/1005 (17 July 1995), sole operative paragraph (deciding that the 918 Committee would receive applications, and provide authorisation where appropriate, for exemptions from the arms embargo for explosives to be used in humanitarian demining programmes). In connection with Sierra Leone, see: S/RES/1132 (8 October 1997), operative paragraph 10(e) (deciding that the 1132 Committee would consider requests for exemptions from the petroleum sanctions). In connection with the Taliban & Al Qaida, see: S/RES/1267 (15 October 1999), operative paragraph 6(f); S/RES/1333 (19 December 2000), operative paragraphs 16(c), 16(d) (requesting the 1267 Committee to establish and maintain a list of approved organizations and governmental relief agencies which were providing humanitarian assistance to Afghanistan. Organizations on the list could then be exempted from the aviation sanctions for activities involving the provision of humanitarian supplies, in accordance with operative paragraph 12 of the same resolution); S/RES/1452 (20 December 2002), operative paragraphs 1, 3 (although the language of the resolution provided that exemptions from the financial

import from a target subject to comprehensive sanctions for the purchase of exempt products and commodities;²¹ determining whether humanitarian circumstances had arisen requiring exemptions for food-stuffs;²² and receiving notifications regarding the provision of supplies that are exempt from a sanctions régime and that do not require its approval in.²³

iii. Considering requests for special assistance under Article 50 of the Charter

In relation to the consideration of requests for special assistance under Article 50 of the Charter, Committees have been tasked with examining such requests and making appropriate recommendations to the Security Council.²⁴

sanctions for basic expenses would apply upon notification to the 1267 Committee by States, it nevertheless required that there be no “negative decision” by the Committee within 48 hours in relation to such notification. Thus, the régime being established was effectively one in which the Committee was considering applications for exemptions). In connection with Ethiopia and Eritrea, see: S/RES/1298 (17 May 2000), operative paragraph 8(e). In connection with Liberia II, see: S/RES/1343 (7 March 2001), operative paragraph 14(d).

²¹ The Council provided for such an exemption in the case of Iraq, and therefore requested that the 661 Committee undertake such a task. See: S/RES/687 (3 April 1991), operative paragraph 23.

²² The Council requested that the Iraq Sanctions Committee undertake such a task. See: S/RES/666 (13 September 1990), operative paragraphs 1, 5.

²³ The Council requested that Sanctions Committees perform such a role in the sanctions régimes against the Bosnian Serbs, Rwanda and Sierra Leone. In connection with the Bosnian Serbs, see: S/RES/942 (23 September 1994), operative paragraph 7(ii)(b) (in relation to supplies intended strictly for medical purposes and foodstuffs). In connection with Rwanda, see: S/RES/1011 (16 August 1995), operative paragraph 11(a) (deciding that the 918 Committee would receive notifications from all States of all exports from their territories of arms or related *matériel* to Rwanda, as well as notification from the Government of Rwanda of all imports it received of arms and related *matériel*, and that the Committee would report regularly to the Council on notifications so received). The Committee thus submitted the following reports: S/1996/329/Rev.1 (2 May & 27 August 1996); S/1996/396/Rev.1 (30 May & 27 August 1996); S/1996/407/Rev.1 (5 June & 27 August 1996); and S/1996/697 (27 August 1996). In connection with Sierra Leone, see: S/RES/1171 (5 June 1998), operative paragraph 4 (requesting that the 1132 Committee report to the Security Council on the notifications received from the Government of Sierra Leone and from States relating to the registration of legitimate arms imports to Sierra Leone). The Committee thus submitted the following reports: S/1998/740 (7 August 1998): *Letter dated 7 August 1998 from the Chairman of the 1132 Committee addressed to the President of the Security Council*; S/1998/1170 (15 December 1998): *Letter dated 15 December 1998 from the Chairman of the 1132 Committee addressed to the President of the Security Council*.

²⁴ The Council has requested Sanctions Committees to undertake such a task in respect of its sanctions régimes against Iraq, Libya, the Federal Republic of Yugoslavia (Serbia-Montenegro) and Haiti. In connection with Iraq, see: S/RES/669 (24 September 1990), preambular paragraph 4. In connection with Libya, see: S/RES/748 (31 March 1992), operative paragraph 9(f) (requesting

iv. **Sanctions Monitoring**

Among the tasks related to sanctions monitoring, Committees have been requested or required to undertake the following tasks: monitoring the implementation of sanctions;²⁵ developing a mechanism to monitor the sale or supply to a target of items prohibited under a sanctions régime;²⁶ monitoring the sale and supply from a target subject to comprehensive sanctions of commodities exempted from the sanctions for the purposes of financing the purchase of humanitarian items;²⁷ considering information concerning violations of sanctions and recommending appropriate measures of response;²⁸ drawing up rules for monitoring

the 748 Committee to give special attention to any communications in accordance with Article 50 from any State with special economic problems that might arise from the carrying out of the sanctions against Libya); S/RES/883 (11 November 1993), operative paragraph 10 (requesting the 748 Committee to examine requests for assistance under Article 50 and make recommendations to the President of the Security Council for appropriate action). In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/843 (18 June 1993), operative paragraph 2 (requesting the 724 Committee to make recommendations to the President of the Council regarding requests made for assistance under Article 50 of the Charter). In connection with Haiti, see: S/RES/917 (6 May 1994), operative paragraph 14(g) (requesting the 841 Committee to examine requests for assistance under the provisions of Article 50 of the Charter of the United Nations and make recommendations to the President of the Security Council for appropriate action).

²⁵ In connection with the Iraq sanctions régime, see: S/RES/700 (17 June 1991), operative paragraph 5 (requesting the Committee to monitor the prohibition upon the provision to Iraq of arms and related *matériel*).

²⁶ In connection with Iraq, see: S/RES/715 (11 October 1991), operative paragraph 7 (requesting the 661 Committee, in cooperation with UNSCOM and the IAEA, to develop a mechanism to monitor the implementation of the prohibition upon “dual use items”). That mechanism was eventually established by the Council in resolution 1051 (1996): S/RES/1051 (27 March 1997), operative paragraph 1.

²⁷ In connection with Iraq, see: S/RES/986 (14 April 1995), operative paragraph 1(a) (delegating to the 661 Committee the task of approving transactions under the OFFP for, *inter alia*, the sale of oil and the purchase of permitted goods), operative paragraph 6 (requesting the 661 Committee to monitor the sale of oil from Iraq to Turkey under the Oil-for-Food Programme (OFFP)).

²⁸ The Council has requested that Sanctions Committees undertake such a task in respect of the sanctions régimes against the former Yugoslavia, Somalia, Libya, the Federal Republic of Yugoslavia (Serbia-Montenegro), Liberia (in the first instance), Haiti, UNITA, Rwanda, Sierra Leone, the Federal Republic of Yugoslavia, the Taliban & Al Qaida, Ethiopia and Eritrea and Liberia (in the second instance). In connection with the former Yugoslavia, see: S/RES/724 (15 December 1991), operative paragraphs 5(b)(iii) and (iv). In connection with Somalia, see: S/RES/751 (24 April 1992), operative paragraphs 11(b) and (c). In connection with Libya, see: S/RES/748 (31 March 1992), operative paragraphs 9(c) and (d). In connection with the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraphs 13(c) and (d); S/RES/820 (17 April 1993), operative paragraph 18. In connection with Liberia I, see: S/RES/985 (13 April 1995), operative paragraphs 4(b) and (c); S/PRST/1999/1 (7

January 1999): *Presidential statement of 7 January 1999*. In connection with Haiti, see: S/RES/841 (16 June 1993), operative paragraph 10(c); S/RES/917 (6 May 1994), operative paragraph 14(c) and (d); S/RES/841 (16 June 1993), operative paragraph 10(e) (requesting the 841 Committee to make periodic reports to the Security Council on information regarding alleged violations of the sanctions, identifying where possible those reported to be engaged in such violations). In connection with UNITA, see: S/RES/864 (15 September 1993), operative paragraphs 22(c) (requesting that the 864 Committee consider information brought to its attention by States concerning violations of the sanctions and to recommend appropriate measures in response thereto), 22 (d) (requesting that the 864 Committee make periodic reports to the Council on information submitted to it regarding alleged violations of the sanctions, identifying where possible persons or entities, including vessels, reported to be engaged in such violations); S/RES/932 (30 June 1994), operative paragraph 8 (requesting the Committee to report to it on compliance with the sanctions régime and in particular on possible violations by two neighbouring States); S/RES/1221 (12 January 1999), operative paragraph 8 (the Council's request was implicit, as it expressed its readiness to pursue reports of sanctions violations, to take steps to reinforce the implementation of the sanctions, and to consider the imposition of additional measures, including in the area of telecommunications, on the basis of a report to be prepared by the 864 Committee). In connection with Rwanda, see: S/RES/918 (17 May 1994), operative paragraph 14(b) (requesting the 918 Committee to consider information concerning violations of the embargo and to make recommendations to the Council on increasing the effectiveness of the embargo), operative paragraph 14(c) (requesting the 918 Committee to recommend appropriate measures in response to violations of the embargo and to provide information on a regular basis to the Secretary-General, for general distribution to Member States). In connection with Sierra Leone, see: S/RES/1132 (8 October 1997), operative paragraph 10(b) (requesting that the 1132 Committee consider information on violations of the sanctions and to recommend appropriate measures in response to those violations), operative paragraph 10(c) (requesting that the 1132 Committee make periodic reports to the Security Council on information regarding alleged violations of the sanctions, identifying where possible the actors reported to be engaged in such violations); S/RES/1171 (5 June 1998), operative paragraph 6 (requesting that the 1132 Committee consider information concerning violations of the new sanctions and recommend appropriate measures in response to those violations); S/PRST/1999/1: *Presidential statement of 7 January 1999* (urging the Sierra Leone Sanctions Committee to investigate violations of the arms embargo and to report to it with recommendations); S/RES/1306 (5 July 2000), operative paragraph 7(b) (requesting that the 1132 Committee consider information concerning violations of the diamond sanctions, identifying where possible those involved in such violations), operative paragraph 7(c) (requesting that the 1132 Committee make periodic reports to the Security Council on alleged violations of the diamond sanctions, identifying where possible those involved in such violations). In connection with the Federal Republic of Yugoslavia, see: S/RES/1160 (31 March 1998), operative paragraph 9(c). In connection with the Taliban and Al Qaida, see: S/RES/1267 (15 October 1999), operative paragraphs 6(b), 6(d); S/RES/1333 (19 December 2000), operative paragraph 16(g). In connection with the sanctions régime against Ethiopia and Eritrea, see: S/RES/1298 (17 May 2000), operative paragraphs 8(b), (c). In connection with Liberia II, see: S/RES/1343 (7 March 2001), operative paragraph 14(b). At the same time, the Council also requested the 1343 Committee to consider, and take appropriate action on, information brought to its attention concerning alleged violations of the first sanctions régime imposed against Liberia, whilst that sanctions régime had been in force: see S/RES/1408 (6 May 2002), operative paragraph 14. The Council's decision to ask the 1343 Committee to assume responsibilities relating to the earlier sanctions régime raises interesting legal issues, as the Council was effectively asking the Committee to explore and act upon violations of a terminated sanctions régime, thus leading to the potential conclusion that it was effectively resurrecting that earlier régime.

sanctions, including provisions relating to the monitoring of exemptions;²⁹ considering information on the transport of arms into countries neighbouring a target for eventual use in that target;³⁰ investigating reports of violations of sanctions;³¹ and suggesting methods for improving monitoring of sanctions implementation.³²

v. *Improving sanctions implementation*

Among the tasks related to improving sanctions implementation, Committees have been requested or required to undertake the following duties: seeking the cooperation of States neighbouring a target in the effective implementation of sanctions;³³ sending a mission, led by the Chairman of the Committee, to the region in which a target is located, in order to demonstrate the Security Council's determination to give full effect to sanctions;³⁴ drawing to

²⁹ The Council requested that the 724 Committee perform such a role in relation to the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro). See: S/RES/820 (17 April 1993), operative paragraph 22(a).

³⁰ S/PRST/1995/22: *Presidential statement of 27 April 1995* (requesting the 918 Committee to consider information provided by States and organizations on the transport of arms into countries neighbouring Rwanda for eventual use in Rwanda).

³¹ S/RES/1202 (15 October 1998), operative paragraph 14 (requesting the Chairman of the 864 Committee to investigate reports that the leader of UNITA had travelled outside Angola in violation of the sanctions, and that UNITA forces had received military training and assistance, as well as arms, also in violation of the sanctions).

³² In connection with the sanctions régime against the Taliban and Al Qaida, see: S/RES/1267 (15 October 1999), operative paragraph 12.

³³ The Council requested the Somalia Sanctions Committee to undertake such a responsibility. See: S/RES/954 (4 November 1994), operative paragraph 12.

³⁴ The Council has requested the Chairmen of Sanctions Committees to undertake such a task in respect of its sanctions régimes against Somalia and the Taliban & Al Qaida. In connection with Somalia, see: S/RES/1474 (8 April 2003), operative paragraph 8. The Council had been encouraging the Chairman of the 751 Committee to undertake such a mission for some time. It made reference to the fact that the Chairman was scheduled to undertake a mission to the region in October 2002: S/RES/1425 (22 July 2002), operative paragraph 10 (requesting the Panel of Experts to brief the Chairman prior to his mission, which was then scheduled to take place in October 2002). At the time of writing this mission has still not taken place. In connection with the Taliban & Al Qaida, see: S/RES/1333 (19 December 2000), operative paragraph 16(f) (requesting the 1267 Committee to consider a visit to countries in the region by the Chairman of the Committee to enhance the full and effective implementation of the sanctions); S/RES/1455 (17 January 2003), operative paragraph 11 (requesting the 1267 Committee to consider a visit to selected countries by the Chairman of the Committee and/or Committee members to enhance the full and effective implementation of the sanctions).

the attention of Member States their obligations in connection with aviation sanctions in the event that aircraft registered in a target State were to land in their territory;³⁵ consulting with regional organizations and arrangements on ways to strengthen the implementation of the sanctions;³⁶ liaising with a target regarding the establishment of a certificate-of-origin régime

³⁵ In connection with the Libya sanctions régime, see: S/PRST/1996/18 (18 April 1996): *Presidential statement of 18 April 1996*. (noting that the Council had requested the 748 Committee to draw to the attention of Member States their obligations under resolution 748 (1992) in the event that Libyan-registered aircraft were to land in their territory).

³⁶ The Council requested Sanctions Committees to undertake such a task in its sanctions régimes against UNITA and Sierra Leone.

In connection with the UNITA sanctions régime, see: S/RES/1221 (12 January 1999), operative paragraph 9 (encouraging the Chairman of the 864 Committee to consult with the OAU and SADC on ways to strengthen the implementation of the sanctions).

In connection with the Sierra Leone sanctions régime, see: S/RES/1132 (8 October 1997), operative paragraph 9 (requesting the 1132 Committee to examine reports from ECOWAS regarding action taken to ensure the strict implementation of the arms and petroleum sanctions), operative paragraph 10(h) (requesting the 1132 Committee to liaise with the ECOWAS Committee on the implementation of the sanctions); S/RES/1171 (5 June 1998), operative paragraph 6 (requesting that the 1132 Committee liaise with the ECOWAS Committee on the implementation of the sanctions); S/RES/1306 (5 July 2000), operative paragraph 22 (requesting that the 1132 Committee strengthen contacts with regional organizations, in particular ECOWAS and the Organization of African Unity, and relevant international organizations, including INTERPOL, with a view to identifying ways to improve effective implementation of the arms and travel sanctions).

for the legitimate trade in diamonds;³⁷ and holding a hearing to assess the role of the diamond trade in fuelling conflict in a target.³⁸

vi. *Liaising with other subsidiary organs*

The tasks delegated to Committees in connection with liaising with other sanctions-related subsidiary organs have included the following: forwarding to the Council reports of Panels of Experts, Monitoring Mechanisms and other subsidiary organs;³⁹ notifying the

³⁷ The Council requested Sanctions Committees to undertake such a task in relation to its sanctions régime against Sierra Leone. See: S/RES/1306 (5 July 2000), operative paragraphs 4, 5 (requesting that the 1132 Committee communicate with the Sierra Leone Government regarding the establishment of a certificate-of-origin régime for trading diamonds and to report to the Council when an effective régime was in operation). The Committee decided, at its 21st meeting on 21 March 2001, that the new Certificate of Origin régime for the trade in Sierra Leone diamonds was in effective operation: see S/2000/966 (6 October 2000): *Letter dated 6 October 2000 from the Chairman of the 1132 Committee addressed to the President of the Security Council*; S/2001/300 (30 March 2001): *Letter dated 28 March 2001 from the Chairman of the 1132 Committee addressed to the President of the Security Council*. See also: S/2002/50 (14 January 2002), annex: *Report of the Security Council Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone*, paragraph 11. The Government of Sierra Leone submitted a number of reviews on the effectiveness of the Certificate of Origin régime: see: S/2001/127 (12 February 2001), enclosure: *Second Review of the new Certificate of Origin Régime for the Export of Sierra Leone diamonds*; S/2001/794 (16 August 2001), enclosure: *First Review of the new Certificate of Origin Régime for the Trade in Sierra Leone diamonds*; S/2002/38 (9 January 2002), enclosure: *Third Review of the Certificate of Origin Régime for the Export of Sierra Leone diamonds*; S/2002/826 (25 July 2002), enclosure: *Fourth Review of the Certificate of Origin Régime for the Export of Sierra Leone diamonds*.

³⁸ S/RES/1306 (5 July 2000), operative paragraph 12 (requesting that the 1132 Committee hold an exploratory hearing in New York, no later than 31 July 2000, to assess the role of diamonds in the Sierra Leone conflict and the link between trade in Sierra Leone diamonds and trade in arms and related *materiel* in violation of the Sierra Leone sanctions, involving representatives of interested States and regional organizations, the diamond industry and other relevant experts, and to report to the Council on the hearing). The Committee ultimately circulated the following report on the hearing: S/2000/1150 (4 December 2000), annex: *Summary report on the exploratory hearing on Sierra Leone diamonds (31 July and 1 August 2000)*.

³⁹ The Council has requested Sanctions Committees to undertake such a task in respect of the sanctions régimes against Somalia, UNITA.

In connection with the Somalia sanctions régime, see: S/RES/1407 (3 May 2002), operative paragraph 2 (requesting that the 751 Committee forward to the Council the report of the preparatory team of experts on the implementation of the sanctions against Somalia).

In connection with the UNITA sanctions régime, see: S/RES/1237 (7 May 1999), operative paragraph 7 (requesting the Chairman of the Committee to submit to it no later than 31 July 1999 an interim report of the expert panels and to submit the final report of the panels within six months of their formation); S/RES/1336 (23 January 2001), operative paragraph 6 (requesting that the written addendum to the monitoring mechanism's final report be submitted by the Chairman of the 864 Committee 19 April 2001); S/RES/1348 (19 April 2001), operative paragraph (requesting that the mechanism's supplementary report be submitted by the Chairman of the

Council of any lack of cooperation with Panels of Experts, Monitoring Mechanisms and other subsidiary organs;⁴⁰ reviewing the reports of a monitoring mechanism, with a view to offering guidance on future work;⁴¹ and cooperating with other relevant Sanctions Committees.⁴²

vii. Refining working methods

Among the tasks delegated to Committees in connection with refining their own working methods, Committees have been requested or required to undertake the following duties: promulgating and updating guidelines to facilitate the implementation of sanctions;⁴³

864 Committee by 19 October 2001); S/RES/1374 (19 October 2001), operative paragraph 8 (requesting that the additional report of the mechanism be submitted by the Chairman of the 864 Committee by 19 April 2002); S/RES/1404 (18 April 2002), operative paragraph 7 (requesting that the additional report of the monitoring mechanism be submitted by the Chairman of the 864 Committee by 19 October 2002); S/RES/1439 (18 October 2002), operative paragraph 6 (requesting that the additional report of the monitoring mechanism be submitted by the Chairman of the 864 Committee by 19 December 2002).

⁴⁰ The Council has issued such a request of Sanctions Committees in the case of Somalia. See: S/RES/1407 (3 May 2002), operative paragraph 7 (making such a request in respect of the work of the preparatory team of experts on the implementation of the Somalia sanctions régime).

⁴¹ S/RES/1374 (19 October 2001), operative paragraph 4 (calling upon the Committee to undertake, by 31 December 2001, a review of the final and supplementary reports of the monitoring mechanism, with a view to examining the recommendations of the reports and to offering guidance to the monitoring mechanism on its future work).

⁴² The Council has requested Sanctions Committees to cooperate in respect of its sanctions régimes against Sierra Leone, the Taliban and Al Qaida, and Liberia (in the second instance).

In connection with the Sierra Leone sanctions régime, see: S/RES/1306 (5 July 2000), operative paragraph 7(e) (requesting that the 1132 Committee continue its cooperation with other relevant sanctions committees, and in particular with the 985/Liberia Sanctions Committee and the 864/UNITA Sanctions Committee).

In connection with the Taliban & Al Qaida sanctions régime, see: S/RES/1390 (16 January 2002), operative paragraph 5(f) (requesting the 1267 Committee to cooperate with other relevant Security Council Sanctions Committees and with the 1373 (Counterterrorism) Committee).

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 14(h) (requesting that the 1343 Committee cooperate with other relevant Security Council Sanctions Committees, in particular the 1132/Sierra Leone Committee and the 864/Angola (UNITA) Committee).

⁴³ The Council has made such a request of Sanctions Committees in respect of the sanctions régimes against Libya, the Federal Republic of Yugoslavia (Serbia-Montenegro), Haiti, UNITA, Sierra Leone, the Federal Republic of Yugoslavia, the Taliban and Al Qaida, Ethiopia and Eritrea and Liberia (in the second instance).

In connection with the Libya sanctions régime, see: S/RES/883 (11 November 1993), operative paragraph 9.

streamlining procedures for processing applications for exemptions from sanctions;⁴⁴ and making relevant information publicly available through appropriate media, including through the improved use of information technology.⁴⁵

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES 1022 (22 November 1995), operative paragraph 8 (requesting the 724 Committee to review and amend its guidelines in the light of the fact that the sanctions had been suspended).

In connection with the Haiti sanctions régime, see: In connection with the Haiti sanctions régime, see: S/RES/841 (16 June 1993), operative paragraph 10(f); S/RES/917 (6 May 1994), operative paragraph 14(f).

In connection with the UNITA sanctions régime, see: S/RES/864 (15 September 1993), operative paragraph 22 (e) (requesting the 864 Committee to promulgate guidelines that might be necessary to facilitate the implementation of the sanctions); S/RES/1127 (28 August 1997), operative paragraph 11 (a) (requesting that the 864 Committee draw up guidelines for the implementation of the additional sanctions, including the designation of UNITA officials and family members whose travel was to be prohibited); S/RES/1173 (12 June 1998), operative paragraph 20 (a) (requesting the 864 Committee to draw up guidelines for the implementation of the new sanctions and to consider ways of strengthening the effectiveness of all the sanctions now imposed against UNITA).

In connection with the Sierra Leone sanctions régime, see: S/RES/1132 (8 October 1997), operative paragraph 10(d) (the guidelines were adopted by the Committee at its 2nd meeting, on 31 October 1997: SC/6435 (31 October 1997): *Press release*); S/RES/1171 (5 June 1998), operative paragraph 6. (the Committee adopted consolidated guidelines on 18 June 1998: SC/6532 (18 June 1998): *Press release*); S/RES/1306 (5 July 2000), operative paragraph 7(d).

In connection with the Kosovo sanctions régime, see: S/RES/1160 (31 March 1998), operative paragraph 9(d).

In connection with the Taliban & Al Qaida sanctions régime, see: S/RES/1390 (16 January 2002), operative paragraph 5(d).

In connection with the sanctions régime against Ethiopia and Eritrea, see: S/RES/1298 (17 May 2000), operative paragraph 8(d).

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 14(c).

⁴⁴ The Council requested the 724 Committee to undertake such a task in respect of the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro). See: S/RES/943 (23 September 1994), operative paragraph 2 (requesting the 724 Committee to adopt appropriate streamlined procedures for expediting its consideration of applications for exemptions from the sanctions for legitimate humanitarian assistance, in particular for applications from UNHCR and the ICRC). In April 1995 the Council again urged the Committee to conclude its elaboration of streamlined procedures and invited the Chairman of the 724 Committee to report to it on the matter as soon as possible: S/RES/988 (21 April 1995), operative paragraph 11. The Council also reaffirmed on multiple occasions its request that the ICRC, UNHCR and other organizations in the U.N. system be granted priority in the processing of applications for exemptions from the sanctions for the provision of humanitarian assistance. See, e.g.: S/RES/970 (12 January 1995), operative paragraph 4; S/RES/988 (21 April 1995), operative paragraph 12.

⁴⁵ The Council requested Sanctions Committees to undertake such a task in relation to its sanctions régimes against Sierra Leone, the Taliban & Al Qaida, Ethiopia and Eritrea and Liberia (in the second instance).

viii. Administering lists for targeted sanctions

Among the tasks delegated to Sanctions Committees in connection with the administration of the lists of those subject to targeted sanctions, Committees have been requested or required to undertake the following duties: establishing and maintaining a list of persons and entities against which targeted sanctions were to be applied;⁴⁶ designating

In connection with the sanctions régime against Sierra Leone, see: S/RES/1306 (5 July 2000), operative paragraph 23.

In connection with the Taliban/Al Qaida sanctions régime, see: S/RES/1333 (19 December 2000), operative paragraph 16(e); S/RES/1390 (16 January 2002), operative paragraph 5(e).

In connection with the sanctions régime against Ethiopia and Eritrea, see: S/RES/1298 (17 May 2000), operative paragraph 13.

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 14(f).

⁴⁶ The Council has requested Sanctions Committees to perform such a role in its sanctions régimes against Iraq, the Bosnian Serbs, UNITA, Sierra Leone, the Taliban & Al Qaida and Liberia (in the second instance).

In connection with the Iraq sanctions régime, see: S/RES/1483 (22 May 2003), operative paragraph 19 (deciding that the 661 Committee would identify individuals and entities whose funds, financial assets and economic resources should be frozen and transferred to the Development Fund for Iraq, in accordance with the financial sanctions imposed by operative paragraph 23 of the same resolution).

In connection with the Bosnian Serb sanctions régime, see: S/RES/942 (23 September 1994), operative paragraph 14.

In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraph 11 (a) (requesting that the 864 Committee draw up guidelines for the implementation of the additional sanctions, including the designation of UNITA officials and family members whose travel was to be prohibited), operative paragraph 24 (requesting the UNITA Committee to update the list of UNITA officials and adult members of their immediate families who were subject to travel sanctions and to expand the information contained in that list to include date and place of birth and any known addresses).

In connection with the Sierra Leone sanctions régime, see: S/RES/1132 (8 October 1997), operative paragraph 10(f); S/RES/1171 (5 June 1998), operative paragraph 6.

In connection with the sanctions régime against the Taliban & Al Qaida, see: S/RES/1333 (19 December 2000), operative paragraph 16(b) (requesting the 1267 Committee to establish and maintain a list of individuals and entities designated as being associated with Usama bin Laden, against which financial sanctions were to be applied); S/RES/1390 (16 January 2002), operative paragraph 5(a) (requesting the 1267 Committee to update regularly the list of individuals and groups associated with Usama Bin Laden, Al Qaida and the Taliban, against which financial, travel and arms sanctions would be applied).

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 14(e) (requesting the 1343 Committee to designate the individuals subject to the travel sanctions and update that list regularly), operative paragraph 14(i) (requesting that the 1343 Committee establish a list of RUF members present in Liberia, whom the Liberian Government was required to expel in accordance with the objectives of the sanctions régime).

particular aircraft that would be subject to aviation sanctions;⁴⁷ designating particular points of entry and landing that would be prohibited under aviation sanctions;⁴⁸ designating financial resources that would be subject to financial sanctions;⁴⁹ and keeping States regularly informed of the list of parties against which targeted sanctions were to be applied.⁵⁰

ix. Considering the humanitarian impact of sanctions

Among the tasks delegated to Sanctions Committees in relation to considering the humanitarian impact of sanctions, Committees have been requested or required to undertake the following duties: reporting on the impact of sanctions, including their humanitarian implications;⁵¹ and making recommendations to the Council on ways to limit any unintended effects of the sanctions on a civilian population.⁵²

9.1.3 Working methods

There is no requirement that the Committees follow the same working methods.⁵³ Each Committee adopts its own set of guidelines, outlining the working methods to be

⁴⁷ The Council requested the 1267 Committee to undertake such a task in relation to the Taliban & Al Qaida sanctions régime. See: S/RES/1267 (15 October 1999), operative paragraph 6(e).

⁴⁸ The Council requested the 1267 Committee to undertake such a task in respect of the sanctions régime against the Taliban and Al Qaida. See: S/RES/1333, operative paragraph 16(a) (requesting the 1267 Committee to establish and maintain a list of all points of entry and landing for aircraft within the territory of Afghanistan under Taliban control).

⁴⁹ The Council requested the 1267 Committee to undertake such a task in relation to the Taliban & Al Qaida sanctions régime. See: S/RES/1267 (15 October 1999), operative paragraph 6(e).

⁵⁰ The Council requested the 1267 Committee to undertake such a task in relation to the Taliban and Al Qaida sanctions régime. See: S/RES/1455 (17 January 2003), operative paragraph 4 (requesting the 1267 Committee to communicate to Member States the list of individuals and groups associated with Usama Bin Laden, Al Qaida and the Taliban at least every three months).

⁵¹ The Council requested the 1267 Committee to undertake such a task in relation to the Taliban & Al Qaida sanctions régime. See: S/RES/1267 (15 October 1999), operative paragraph 6(c).

⁵² In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 14(g).

⁵³ The information provided here is based in part upon data accessible in the public domain, and in part upon data gathered from interviews conducted with diplomats, U.N. Secretariat staff, members of the U.N.'s non-governmental organisation community, and academics.

followed. In theory it is therefore possible that a newly-established Committee might adopt a set of working methods or procedures that differs completely from those of other Sanctions Committees, even though it might have been created with a mandate that is identical to that of another Committee. In practice, however, there are generally many similarities between the guidelines and working procedures of the various Committees. This is probably due to the fact that a number of diplomats represent their State on multiple Sanctions Committees, thus bringing with them certain expectations of what will be included within the new Committee's guidelines and working procedures.

Among the key shared working methods are that the Committees must adopt decisions according to consensus.⁵⁴ Thus a decision cannot be adopted if even one Sanctions Committee member does not want it to be adopted. As a practical matter, many Sanctions Committees have embraced what is known as the "no-objection procedure". According to the no-objection procedure, potential decisions of the Committee are circulated to all members, who then have a period of 48 hours in which to raise any objections. If any objection is raised, then the potential decision cannot be adopted. If, however, no objection is received by the Chairman of the Committee by the time the 48 hours have elapsed, then the decision is deemed to have been approved by all the members of the Committee.

⁵⁴ Scharf, Michael P., & Dorosin, Joshua L., 'Interpreting U.N. Sanctions: the Rulings and Role of the Yugoslavia Sanctions Committee' (1993) 19 *Brooklyn JIL* 771-827, 774. Scharf and Dorosin, writing in relation to the workings of the 724 Sanctions Committee, note that although consensus was technically required only for questions governed by the "no-objection" procedure, in practice the committee made all of its decisions by consensus.

9.2 The Security Council Working Group on Sanctions

The Security Council established an Informal Working Group of the Security Council on General Issues of Sanctions (the “Working Group on Sanctions”) in April 2000.⁵⁵ The mandate of the Working Group was to develop general recommendations for improving the effectiveness of sanctions. The Group was supposed to report its findings to the Council by 30 November 2000,⁵⁶ but by the middle of 2004 the Group had still not issued any public report. In December 2003, the President of the Council noted that the proposed “outcome document” was still in draft form, due to “divergent views on the recommended duration and termination of sanctions”.⁵⁷ At the same time, the President also announced that the members of the Council had agreed to extend the Working Group’s mandate for an additional year.⁵⁸

9.3 Disarmament Commissions and Commissions of Inquiry

The Security Council has established Commissions to perform particular tasks related to the implementation of sanctions in the cases of Iraq and Rwanda. In the case of Iraq, the Council established three Commissions: the United Nations Compensation Commission (UNCC), the United Nations Special Commission (UNSCOM), and the United Nations Monitoring Verification and Inspection Commission (UNMOVIC). In connection with the sanctions régime against Rwanda, the Council established an International Commission of Inquiry to explore how to improve the implementation of

⁵⁵ For the establishment and mandate of the Working Group, see: S/2000/319 (17 April 2000): *Note by the President of the Security Council*.

⁵⁶ *Ibid*, paragraph 4.

⁵⁷ See: SC/7960 (18 December 2003): *Press statement by the President of the Security Council concerning the Working Group on General Issues of Sanctions*.

⁵⁸ *Ibid*.

sanctions against Rwanda. Like the Sanctions Committees, the Commissions are considered to be subsidiary organs of the Council. The method for determining the composition of the Commissions has varied, however. The UNCC has functioned somewhat like a Committee of the whole, with each member of the Security Council represented on its primary decision-making body – the Governing Council.⁵⁹ The personnel serving on the other Commissions have generally been appointed by the Secretary-General.⁶⁰ The Commissions have all been expected, however, to report to the Council on their work on a regular basis.

9.3.1 The Iraq Commissions: UNCC, UNSCOM, UNMOVIC

The UNCC was established in May 1991, in order to process claims and distribute compensations for losses arising from Iraq's invasion and occupation of Kuwait.⁶¹ By the end of 2003 the Commission had received over 2.5 million compensation claims, 98% of

⁵⁹ For information regarding the Governing Council of the UNCC, see: <http://www.unog.ch/uncc/governin.htm> (last visited 19 January 2004).

⁶⁰ The Secretary-General appointed 21 experts to UNSCOM, 6 to the Rwanda International Commission of Inquiry, and 17 to UNMOVIC. For documents concerning those appointments, see: S/22614 (17 May 1991): *Report of the Secretary-General pursuant to paragraph 9(b) of resolution 687*, paragraph 3 (reporting the appointment of 21 experts to UNSCOM, including the initial Executive Chairman Rolf Ekeus); S/1995/879 (20 October 1995): *Letter dated 16 October from the Secretary-General to the President of the Security Council* (noting that six people had been appointed to the Commission); S/2000/60 (27 January 2000): *Letter dated 26 January 2000 from the Secretary-General addressed to the President of the Security Council* (recommending the appointment of Hans Blix as Executive Chairman of UNMOVIC); S/2000/61 (27 January 2000): *Letter dated 27 January 2000 from the President of the Security Council addressed to the Secretary-General* (approving the appointment of Blix as Executive Chairman); S/2000/207 (10 March 2000): *Letter dated 10 March 2000 from the Secretary-General to the President of the Security Council* (reporting the appointment of 16 Commissioners to serve alongside Executive Chairman Hans Blix).

⁶¹ S/RES/692 (20 May 1991), operative paragraph 3.

which had been resolved.⁶² The Governing Council has held more than 50 sessions and has reported regularly to the Security Council.⁶³

The Council first foreshadowed the establishment of a Special Commission to monitor and oversee Iraq's compliance with its disarmament obligations in April 1991.⁶⁴ The Special Commission was to cooperate in the implementation of its tasks with the International Atomic Energy Agency (IAEA), which would monitor and verify Iraq's compliance with its obligation not to possess, develop or acquire nuclear weapons.⁶⁵ UNSCOM was duly established⁶⁶ and it oversaw the monitoring of the Iraq disarmament program until it was replaced by the United Nations Monitoring, Verification and Inspection Commission, "UNMOVIC", in late-1999.⁶⁷ UNSCOM's mandate was to carry out immediate on-site inspections based on Iraq's declarations regarding its weapons holdings and programmes, to undertake the destruction, removal or rendering harmless of all nuclear, biological or chemical weapons and anti-ballistic missiles with a range of greater than 150 km, or components for the manufacture or development thereof, and to develop a plan for

⁶² For general information on the UNCC, see: <http://www.unog.ch/uncc/> (Last visited 19 January 2004).

⁶³ For the Commission's most recent report to the Council, see: S/2003/914 (24 September 2003): *Letter dated 18 September 2003 from the President of the Governing Council of the United Nations Compensations Commission addressed to the President of the Security Council*.

⁶⁴ S/RES/687 (3 April 1991), operative paragraph 9(b)(i).

⁶⁵ S/RES/687 (3 April 1991), operative paragraph 13.

⁶⁶ The Secretary-General's recommendations for the establishment of UNSCOM and for the overall plan for disarming Iraq were submitted to the Security Council in April and May 1991: see S/22508 (18 April 1991): *Report of the Secretary-General on the implementation of paragraph 9(b)(i) of resolution 687 (1991)*; S/22614 (17 May 1991): *Report of the Secretary-General pursuant to paragraph 9(b) of resolution 687*. The Secretary-General's proposals were endorsed by the Council in the following decisions: S/22509 (19 April 1991): *Letter dated 19 April 1991 from the President of the Security Council addressed to the Secretary-General*; S/RES/699 (June 17 1991), operative paragraph 1.

⁶⁷ The Security Council replaced UNSCOM by UNMOVIC in S/RES/1284 (December 17 1999), operative paragraph 1. For further details relating to both UNSCOM and UNMOVIC, see discussion below in the Iraq case-study.

the future ongoing monitoring and verification of Iraq's compliance with its disarmament obligations under resolution 687 (1991).⁶⁸

UNSCOM reported to the Council on its activities on a regular basis.⁶⁹ During its tenure, the Special Commission played a constructive role in monitoring Iraq's compliance with its disarmament obligations under the sanctions régime.⁷⁰ Ultimately, however, the Commission confronted major difficulties in undertaking its mandated activities, due to Iraq's refusal to allow it to resume operations after its inspectors had been withdrawn from Iraq in late-1998. In December 1999 the Council decided to replace UNSCOM with UNMOVIC.

The decision to establish UNMOVIC was made in response to the recommendations of a panel that had been established in January 1999 to explore the

⁶⁸ A detailed examination of the activities of UNSCOM is beyond the scope of this thesis. For details regarding UNSCOM's mandate, see: S/RES/687 (3 April 1991), operative paragraphs 8-13. For a concise summary of UNSCOM's activities, see: *Report of the first Panel established pursuant to the note by the President of the Security Council on 30 January 1999, concerning disarmament and current and future ongoing monitoring and verification issues*, below note 100. For a personal account of UNSCOM's operations, see: Butler, Richard, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (2000) Public Affairs, NY.

⁶⁹ The Security Council established a number of reporting requirements for UNSCOM. UNSCOM thus submitted the following reports: one report pursuant to resolution 687 (1991) on its activities [S/23165 (25 October 1991)]; nine half-yearly reports pursuant to resolution 699 (1991) on its activities [S/23268 (4 December 1991); S/24108/Corr.1 (16 April 1992); S/24984 (17 December 1992); S/25977 (21 June 1993); S/26910 (21 December 1993); S/1994/750 (24 June 1994); S/1994/1422 (15 December 1994); S/1995/494 (20 June 1995); and S/1995/1038 (17 December 1995)]; eight half-yearly reports pursuant to resolution 715 (1991) on the implementation of its plan to ensure ongoing monitoring and Verification of Iraq's disarmament activities [S/23801 (10 April 1992); S/24661 (19 October 1992); S/25620 (19 April 1993); S/26684 (5 November 1993); S/1994/489 (22 April 1994); S/1994/1138 (7 October 1994); S/1995/284 (10 April 1995); and S/1995/864 (11 October 1995)]; and eight half-yearly reports pursuant to resolution 1051 (1996) - which sought to consolidate UNSCOM's multiple reporting requirements - on its activities in general [S/1996/258 (11 April 1996); S/1996/848 (11 October 1996); S/1997/301 (11 April 1997); S/1997/774 (6 October 1997); S/1998/332 (16 April 1998); S/1998/920 (6 October 1998); S/1999/401 (9 April 1999); and S/1999/1037 (8 October 1999)].

⁷⁰ For an overview of UNSCOM's achievements, as well as the questions remaining in relation to the extent to which Iraq had complied fully with its obligations, see: *Report of the first Panel established pursuant to the note by the President of the Security Council on 30 January*

disarmament, monitoring and verification issues arising from the implementation of the Iraq sanction.⁷¹ UNMOVIC was thus created with the aim of establishing a reinforced system of ongoing monitoring and verification of Iraq's compliance with its disarmament obligations.⁷² The Inspection Commission did not have an auspicious beginning, as it was unable to establish operations in Iraq for almost three years. It was not until the Council adopted resolution 1441 (2002), in November 2002, that Iraq finally agreed to UNMOVIC's deployment on its territory. During the subsequent three months, UNMOVIC's role became quite prominent, as the international community scrutinised the extent to which Iraq was complying with its disarmament obligations, as required by resolution 1441 (2002) and previous resolutions.⁷³ Since the conclusion of the second Gulf War, however, the

1999, concerning disarmament and current and future ongoing monitoring and verification issues, below note 100, paragraphs 12-30.

⁷¹ The Panel was one of three panels established to investigate different issues arising from the Security Council's action to address the situation in Iraq. For the decision establishing the Panel, see: S/1999/100: *Note by the President of the Security Council* (30 January 1999). For further discussion of the three panels, see the section below on Panels of Experts.

⁷² S/RES/1284 (17 December 1999), operative paragraphs 1, 2.

⁷³ For UNMOVIC's quarterly reports, which have been submitted in accordance with paragraph 12 of resolution 1284 (1999), in the form of annexes to notes by the Secretary-General, see: S/2000/516 (1 June 2000), annex: *First quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2000/835 (28 August 2000), annex: *Second quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2000/1134 (1 December 2000), annex: *Third quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2001/177 (27 February 2001), annex: *Fourth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2001/515 (24 May 2001), annex: *Fifth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2001/833 (30 August 2001) annex: *Sixth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2001/1126 (29 November 2001), annex: *Seventh quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2002/195 (26 February 2002), annex: *Eighth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2002/606 (31 May 2002), annex: *Ninth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2002/981 (3 September 2002) annex: *Tenth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2002/1303 (27 November 2002), annex: *Eleventh quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2003/232 (28 February 2003), annex: *Twelfth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*.

Commission's work has effectively been placed on hold, as it has not been authorised by the occupying powers to resume its inspections in Iraq.

9.3.2 The International Commission of Inquiry on Rwanda

The Security Council experimented with the idea of an International Commission of Inquiry into the implementation of sanctions in connection with the Rwanda sanctions régime. The International Commission of Inquiry for Rwanda was established in September 1995.⁷⁴ It consisted of six "impartial and internationally respected persons,"⁷⁵ including legal, military and police experts, and it was mandated: to collect information and investigate reports relating to the sale or supply of arms and related *matériel* to former Rwandan government forces in the Great Lakes region, in violation of the Rwandan sanctions; to investigate allegations that such forces were receiving military training in order to destabilize Rwanda; to identify parties aiding and abetting the illegal acquisition of arms by former Rwandan government forces, in violation of the sanctions; and to recommend measures to end the illegal flow of arms in the subregion.⁷⁶

The Commission's mandate was initially for a short period,⁷⁷ but it was subsequently maintained or re-activated by the Council on two occasions.⁷⁸ During its tenure, the

⁷⁴ S/RES/1013 (7 September 1995), operative paragraph 2.

⁷⁵ The initial resolution provided for five to ten such people to be appointed, but in mid-October the Secretary-General noted that six people had been appointed to the Commission: S/1995/879 (20 October 1995): *Letter dated 16 October from the Secretary-General to the President of the Security Council*.

⁷⁶ S/RES/1013 (7 September 1995), operative paragraph 1.

⁷⁷ S/RES/1013 (7 September 1995), operative paragraph 4. Interestingly, the Council did not specify a duration for the Commission's mandate, but it did request the Secretary-General to submit, within three months from the Commission's establishment, an interim report on the Commission's findings, and to submit a final report as soon as possible thereafter, thus implying that the mandate would not be much longer than three months.

⁷⁸ S/RES/1053 (23 April 1996), operative paragraph 2;

International Commission of Inquiry submitted a total of four reports to the Council.⁷⁹ Among the Commission's findings were that arms and related *matériel* had indeed been delivered to former Rwandan government forces in Zaire, via the Seychelles, in violation of the Rwandan arms embargo.⁸⁰ The Commission outlined a number of recommendations in the course of its reports, including some that were designed to facilitate the implementation of Security Council arms embargoes in general, as well as others that aimed to improve the implementation of the Rwandan arms embargo in particular.

⁷⁹ S/1996/67 (29 January 1996), annex: *Interim report of the International Commission of Inquiry on the Rwanda arms embargo*"; S/1996/195 (14 March 1996), annex: *Report of the International Commission of Inquiry on the Rwanda arms embargo*; S/1997/1010 (24 December 1997), annex: *Final report of the International Commission of Inquiry on the Rwanda arms embargo* [this report was originally annexed to a letter dated 1 November 1996 from the Secretary-General to the President of the Security Council, but it was not circulated as an official document of the Council until more than a year later]; S/1998/63 (26 January 1998), annex: *Addendum to the final report of the International Commission of Inquiry on the Rwanda arms embargo*.

⁸⁰ See: *Report of the International Commission of Inquiry on the Rwanda arms embargo*, above note 79, paragraphs 21-39. The Commission's investigations centred upon allegations that had appeared in a Human Rights Watch report [*Rearming with impunity: international support for the perpetrators of the Rwandan genocide* (1995) Washington, D.C., USA] that shipments of arms had found their way into the possession of the former-Rwandan Government military forces, via Zaire. The Commission concluded that the report was accurate and that two shipments of arms, originating in the Seychelles, had indeed made their way into the hands of Rwandan Government forces [*Report of the International Commission of Inquiry*, above note 79, paragraph 64]. Authorities in the Seychelles had authorized the sale with the understanding that they intended for use in Zaire, as they had been provided with "end-user certificates", purportedly issued by the Government of Zaire. Once it became apparent that the shipments might have been delivered to a destination other than Zaire, the Seychelles cancelled subsequent additional scheduled shipments [*Report of the International Commission of Inquiry*, above note 79, paragraph 65]. Ironically, the arms had originally been seized by the Seychelles from a ship named *Malo* because they were being transported to Somalia in violation of the United Nations sanctions régime against that country [*Report of the International Commission of Inquiry*, above note 79, paragraph 29]. The Commission found that two individuals were instrumental in facilitating the shipments – Colonel Théoneste Bagora, a high-ranking officer of the former-Rwandan government forces, and Mr. William Ehlers, a South African National who was the director of a company called "Delta Aero". It further concluded that it was highly probable that a violation of the sanctions had taken place, involving the supply of more than 80 tons of rifles, grenades and ammunition in two consignments flown to Goma airport on 17 and 19 June 1994 and subsequently transferred to the Rwandan government forces, then in Gisenyi, Rwanda. It also concluded that the Government of Zaire, or elements thereof, had aided and abetted the violation. It also recommended that there should be further investigation into the role of Mr. Ehlers.

Among the Commission's general recommendations were that: (a) Upon the imposition of an arms embargo against a State or a part thereof, the Security Council should consider urging neighbouring States to establish within their respective Governments an office to monitor, implement and enforce the embargo within its own territory and to gather information that might be used by investigating bodies dispatched by the Council;⁸¹ (b) Where the States concerned could not staff and equip such offices within their existing resources, consideration be given to establishing a trust fund, within the context of Article 50 of the United Nations Charter, to provide such assistance;⁸² (c) The Council should consider expanding the functions of future Sanctions Committees, to include liaising with the offices in neighbouring States, as well as receiving, analysing and circulating to Member States reports submitted by those offices;⁸³ and (d) Consideration should be given to requesting States producing arms and *matériel* to take any measures necessary under their domestic law to implement the provisions of the arms embargo, and in particular to prosecute their nationals involved in violations of the embargo.⁸⁴

Among the Commission's specific recommendations were that: (a) The Council should consider inviting the Government of South Africa to investigate the participation of a particular South African citizen in the negotiations that had led to the delivery of arms to former Rwandan armed forces in Goma, Zaire, in violation of the sanctions;⁸⁵ (b) The

⁸¹ *Ibid*, paragraph 77.

⁸² *Ibid*, paragraph 79.

⁸³ *Ibid*, paragraph 80.

⁸⁴ See: *Third report of the International Commission of Inquiry on the Rwanda arms embargo*, above note 79, paragraph 110. The Commission noted that some States had reported that they were unable to prosecute nationals accused of crimes in a third country. It therefore recommended that Member States be invited to introduce into their domestic legislation the capacity to prosecute such individuals.

⁸⁵ *Ibid*, paragraph 86.

Council should consider calling upon the Government of Bulgaria to make available to the 918 Committee the findings of an internal investigation into allegations that a Bulgarian company had been willing to sell arms in violation of Security Council resolutions;⁸⁶ (c) The Council should call upon the Government of Zaire to investigate the apparent complicity of its own personnel and officials in the purchase of arms from the Seychelles;⁸⁷ (d) The Council should consider inviting the Government of Zaire to station United Nations observers on its territory to monitor the implementation of the sanctions against Rwanda and to deter future violations;⁸⁸ (e) The Security Council should consider expanding the sanctions to include a freeze on the assets of individuals and organizations involved in raising funds to finance the insurgency against Rwanda;⁸⁹ and (f) The Security Council should encourage Tanzanian authorities to liaise with UNHCR and to consult with the International Criminal Tribunal for Rwanda (ICTR) to see if legal grounds existed for detaining individuals accused of intimidating people in Rwandan refugee camps into participating in acts that violated the arms embargo.⁹⁰

9.4 Bodies of Experts: Groups, Committees, Teams and Panels of Experts

The Security Council has established bodies of experts to investigate the implementation of sanctions in connection with seven of its sanctions régimes, including those against Iraq, Somalia, UNITA, the Taliban & Al Qaida, Liberia (in the second instance), Liberia (in the third instance) and certain actors in the DRC. Although there have been a

⁸⁶ *Ibid*, paragraph 87.

⁸⁷ *Ibid*, paragraph 88.

⁸⁸ *Ibid*, paragraph 91(a).

⁸⁹ *Ibid*, paragraph 114.

number of variations in the specific title of the various bodies of experts, with examples including “Panel”, “Group of Experts”, “Panel of Experts” and “Team of Experts”, the expert bodies are generally established to serve for short periods, consisting of a matter of weeks or months. In a number of instances the mandate of expert bodies has been extended, and in others the expert body has subsequently been reconstituted where the Council has considered such a step to be desirable. Like Sanctions Committees and Commissions, expert bodies are subsidiary organs of the Council, with a responsibility to report to the Council on their activities. In general, expert bodies have reported to the Council via the relevant Sanctions Committee, with the Chairman of that Sanctions Committee forwarding or presenting regular written and oral reports to the Council on behalf of the relevant expert body.

9.4.1 The group of experts on the Iraq Sanctions Régime

In June 1998, the Council requested the Secretary-General to establish a group of experts to determine, in consultation with the Government of Iraq, whether Iraq was able to export the amount of petroleum and petroleum products permissible under the Oil-for-Food Programme.⁹¹ The group was also to report on Iraqi production and transportation capacity.⁹² The group submitted its report within two months.⁹³ In its report it noted that the oil industry of Iraq was in a “lamentable state”.⁹⁴ Among the group’s conclusions were that there was a need for rapid and adequate investment in spare parts and repair of oil

⁹⁰ *Ibid*, paragraph 115.

⁹¹ S/RES/1153 (20 February 1998), operative paragraph 12.

⁹² *Ibid*.

⁹³ See: S/1998/330 (15 April 1998), annex: *Report of the group of experts established pursuant to paragraph 12 of Security Council resolution 1153 (1998)*.

⁹⁴ *Ibid*, paragraph 7.

production wells,⁹⁵ and that the Iraqi Government's estimates for the potential volume of oil that could be exported was "optimistic".⁹⁶

9.4.2 Ad Hoc Panels on the Iraq Sanctions Régime

In January 1999, when Iraq was refusing to allow UNSCOM to resume its activities on Iraqi territory,⁹⁷ the Security Council decided to establish three separate *ad hoc* panels.⁹⁸ The panels were established with the following objectives: a) Panel I would make recommendations on how to re-establish an effective disarmament monitoring and verification régime in Iraq; b) Panel II would address the humanitarian needs of the Iraqi people; and c) Panel III would consider outstanding issues relating to prisoners of war and Kuwaiti property.⁹⁹ The work of the first two panels was directly related to the administration, implementation and enforcement of sanctions. The panels submitted their reports within two months.¹⁰⁰ The recommendations of the first two panels were clearly

⁹⁵ *Ibid*, paragraph 24.

⁹⁶ *Ibid*, paragraph 33.

⁹⁷ The UNSCOM inspectors had been withdrawn from Iraq on 16 December 1998, due to security concerns arising from the impending bombardment of Baghdad by US and British warplanes.

⁹⁸ See: S/1999/100: *Note by the President of the Security Council* (30 January 1999).

⁹⁹ *Ibid*.

¹⁰⁰ For the reports of the panels, see: S/1999/356 (30 March 1999): Letters dated 27 and 30 March 1999, respectively, from the Chairman of the Panels established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) addressed to the President of the Security Council, Annex I [containing the *Report of the First Panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) concerning disarmament and current and future ongoing monitoring and verification issues*], Annex II [containing the *Report of the Second Panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) concerning the current humanitarian situation in Iraq*], Annex III [containing the *Report of the Third Panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) on prisoners of war and Kuwaiti property*].

taken into account by the Council,¹⁰¹ as demonstrated by the actions it subsequently took to replace UNSCOM with UNMOVIC and to reinvigorate the Oil-for-Food Programme.¹⁰²

9.4.3 The Panel of Experts on UNITA sanctions

Acting upon a recommendation that had been made by the UNITA Sanctions Committee, the Security Council decided in May 1999 to establish expert panels to facilitate the effective implementation of the UNITA sanctions.¹⁰³ The mandate of the panels, included: (a) collecting information relating to the violations of the arms, petroleum, diamond and financial sanctions; (b) identifying those committing or facilitating the violations of those sanctions; and (c) recommending measures to end such violations and to improve the implementation of the sanctions.¹⁰⁴ In late-July 1999, the 864 Committee appointed ten experts to the expert panels.¹⁰⁵ The experts came from a variety of countries, possessing expertise in fields conducive to the investigation of violations of different aspects of the multi-faceted UNITA sanctions régime.

The experts convened for the first time in late-August 1999, in New York, when they decided to act as one panel rather than two.¹⁰⁶ During the six-month period of the Panel's operation, its members visited close to thirty countries and met with a wide range of people, including Government officials, diplomats, NGOs, police and intelligence sources,

¹⁰¹ For the major recommendations of the First Panel, see *Report of the First Panel, ibid*, paragraphs 61-68. For the major recommendations of the Second Panel, see *Report of the Second Panel, ibid*, paragraphs 43-57.

¹⁰² See, in particular, S/RES/1284 (17 December 1999).

¹⁰³ S/RES/1237 (7 May 1999), operative paragraph 6.

¹⁰⁴ *Ibid*.

¹⁰⁵ S/1999/837 (30 July 1999), annex: *List of experts appointed to the expert panels established in accordance with paragraph 6 of Security Council resolution 1237 (1999)*.

¹⁰⁶ S/2000/203 (10 March 2000), enclosure: *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, paragraph 8.

industry associations, corporations and journalists.¹⁰⁷ The Panel circulated a brief interim report on 30 September 1999, and on 28 February 2000 it submitted its full report to the 864 Committee.¹⁰⁸ The report contained the Panel's findings and conclusions on violations of the arms, petroleum, diamond and financial sanctions against UNITA, as well as on violations of the diplomatic and travel sanctions against UNITA.¹⁰⁹ The Panel made thirty-nine recommendations on how the sanctions violations might be addressed.¹¹⁰ In April 2000, the Security Council acted upon one of the recommendations put forth in the report of the Panel of Experts by requesting the Secretary-General to establish a monitoring mechanism on the sanctions against UNITA.¹¹¹

¹⁰⁷ *Ibid.*

¹⁰⁸ S/1999/1016 (30 September 1999), annex: *Interim report of the Expert Panel established by the Security Council in resolution 1237 (1999) of 7 May 1999*; S/2000/203 (10 March 2000), annex I, enclosure: *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*.

¹⁰⁹ Interestingly, the question of sanctions against UNITA representation and travel was not actually included in the mandate for the Panel as outlined by the Council in resolution 1237 (1999). It is unclear how the Panel came to consider that these sanctions were within the scope of its mandate. In the first paragraph of the Panel's report it notes that resolution 1237 (1999) established it to investigate violations of Security Council sanctions against UNITA. It then lists the "sanctions at issue", among which it includes the travel and representation sanctions, despite the fact that the Council had not included those sanctions within the mandate explicitly outlined for the Panel of Experts in operative paragraph 6 of resolution 1237 (1999). See: *Report of the UNITA Panel of Experts, ibid*, paragraph 1.

¹¹⁰ The Panel outlined its recommendations in clusters, arranged according to the different elements targeted by the UNITA sanctions. See: *Report of the UNITA Panel of Experts, ibid*, paragraphs 52-58 (containing recommendations relating to arms and military equipment), 70-74 (containing recommendations relating to petroleum and petroleum products), 109-114 (relating to diamonds), 126-128 (containing recommendations relating to UNITA finances and assets), 157-162 (containing recommendations relating to UNITA representation and travel abroad), and 170-181 (containing recommendations on "related matters", including facilitating the implementation of sanctions by improving coordination between various international actors such as SADC and Interpol).

¹¹¹ S/RES/1295 (18 April 2000), operative paragraph 3. For details relating to the establishment of the monitoring mechanism on the UNITA sanctions, see the section below on monitoring mechanisms.

9.4.4 The Panel of Experts on the Sierra Leone sanctions régime

The Security Council requested the Secretary-General to establish a Panel of Experts to investigate matters relating to the implementation of the Sierra Leone sanctions régime in July 2000.¹¹² The Panel, which would consist of no more than five members and would operate for a period of four months, was to undertake the following tasks: (a) collecting information on possible violations of the arms embargo against Sierra Leone and on the link between the trade in diamonds and the trade in arms and related *matériel*, including through visits to Sierra Leone and other States and through making appropriate contacts;¹¹³ (b) considering the adequacy of air traffic systems in the region for detecting flights suspected of violating the arms sanctions;¹¹⁴ (c) participating in an exploratory hearing in New York on the role of diamonds in the Sierra Leone conflict and the link between the trade in diamonds and the trade in arms in that country;¹¹⁵ and (d) reporting to the Council, through the 1132 Committee and by 31 October 2000, with its observations and recommendations on strengthening the implementation of the arms and diamond sanctions.¹¹⁶

The Panel of Experts submitted its written report to the Council in December 2000.¹¹⁷ In its report, the Panel outlined findings on the illicit trade in Sierra Leone diamonds,¹¹⁸ on the flow of arms and related *matériel* and other forms of military assistance

¹¹² S/RES/1306 (5 July 2000), operative paragraph 19.

¹¹³ S/RES/1306 (5 July 2000), operative paragraph 19(a).

¹¹⁴ S/RES/1306 (5 July 2000), operative paragraph 19(b).

¹¹⁵ S/RES/1306 (5 July 2000), operative paragraph 19(c). For details relating to the exploratory hearing, see: S/2000/1150 (4 December 2000), annex: *Summary report on the exploratory hearing on Sierra Leone diamonds (31 July and 1 August 2000)*.

¹¹⁶ S/RES/1306 (5 July 2000), operative paragraph 19(d).

¹¹⁷ S/2000/1195 (20 December 2000), enclosure: *Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000), paragraph 19, in relation to Sierra Leone*.

¹¹⁸ See in general: *ibid*, paragraphs 1-18, 65-150.

into Sierra Leone,¹¹⁹ and on air traffic control systems in West Africa.¹²⁰ The Panel's report remains perhaps the most sophisticated analysis yet completed by a body charged with the administration, implementation or enforcement of a United Nations sanctions régime, of the challenges that must be overcome in order to facilitate the effective implementation of a sanctions régime. The report contained a range of insightful observations and provided numerous concrete recommendations for action that might be taken to address violations of the Sierra Leone sanctions and United Nations sanctions in general.¹²¹ The Security Council has subsequently acted upon many of the Sierra Leone Panel's recommendations in addressing the situations in Sierra Leone, Liberia and West Africa in general, and in its oversight of other arms embargoes and diamond sanctions.

9.4.5 The Afghanistan/Taliban/Al Qaida Committee of Experts

The Security Council requested the Secretary-General to appoint a committee of experts to make recommendations on improving the monitoring of the Afghanistan/Taliban/Al Qaida sanctions in December 2000.¹²² The Committee of Experts was requested to report to the Council within sixty days on how to monitor the arms embargo against the Taliban and the closure of terrorist training camps.¹²³ In its report, the Committee of Experts outlined the activities it had taken to fulfil its mandate and made a number of key recommendations.¹²⁴ As part of its operations, the Committee of Experts had

¹¹⁹ See in general: *ibid*, paragraphs 19-31, 167-273.

¹²⁰ See in general: *ibid*, paragraphs 32-46, 274-315.

¹²¹ For a more detailed discussion of those recommendations, see the analysis of the Rwanda sanctions régime in the Appendices.

¹²² S/RES/1333 (19 December 2000), operative paragraph 15.

¹²³ S/RES/1333 (19 December 2000), operative paragraph 15(a).

¹²⁴ S/2001/511 (22 May 2001): Letter dated 21 May from the Secretary-General addressed to the President of the Security Council, enclosure [containing the *Report of the Committee of*

consulted with a range of actors, including representatives of the States sharing a border with Afghanistan and of two States with a major strategic interest in events in Afghanistan – the United States and the Russian Federation.¹²⁵ The Committee concluded that the arms embargo and the closure of the terrorist training camps could best be monitored by strengthening mechanisms that were already in place in the six countries bordering Afghanistan.¹²⁶ It therefore recommended that the Council establish an office for sanctions monitoring and coordination, consisting of a Headquarters team and a number of Sanctions Enforcement Support Teams, each working alongside the border control services in the countries neighbouring Afghanistan.¹²⁷ Among the Committee's other recommendations were: that the Headquarters Office be located in Vienna; that the Sanctions Enforcement Support Teams should be based with existing United Nations offices in the countries neighbouring Afghanistan; and that the Council consider specifying a prohibition against aircraft turbine fuel and fluids and lubricants for use in armoured vehicles, as part of the arms embargo.¹²⁸

9.4.6 The Liberia II Panel of Experts

The Security Council requested the Secretary-General to establish a Panel of Experts on the second Liberian sanctions régime in March 2001.¹²⁹ The Panel was

Experts appointed pursuant to Security Council resolution 1333 (2000), paragraph 15 (a), regarding monitoring of the arms embargo against the Taliban and the closure of terrorist training camps in the Taliban-held areas of Afghanistan].

¹²⁵ *Ibid*, paragraphs 11-19 [listing the range of actors with which the Committee of Experts met]

¹²⁶ *Ibid*, paragraph 94.

¹²⁷ *Ibid*, paragraph 96. For discussion of these bodies, which formed the UNITA monitoring mechanism, see the section below on monitoring mechanisms.

¹²⁸ *Ibid*, paragraphs 97-102.

¹²⁹ S/RES/1343 (7 March 2001), operative paragraph 19.

established for an initial period of six months,¹³⁰ but it was subsequently “re-established” or “established” on four separate occasions.¹³¹ The Panel’s initial mandate included the following tasks: (a) investigating violations of the sanctions;¹³² (b) collecting information on the compliance of the Liberian Government with the demands articulated by the Council;¹³³ (c) investigating possible links between the exploitation of natural resources and other forms of economic activity in Liberia, and the fuelling of conflict in Sierra Leone and other neighbouring countries, as highlighted by the Panel of Experts on Sierra Leone;¹³⁴ (d) collecting information linked to the illegal activities of individuals who had violated the arms sanctions against Sierra Leone;¹³⁵ (e) reporting to the Council with observations and recommendations on the matters within its mandate;¹³⁶ (f) keeping the 1343 Committee updated on its activities;¹³⁷ and (g) bringing relevant information to the attention of the States concerned and to allow them the right of reply.¹³⁸

The Security Council subsequently required the Panel to undertake the following additional tasks: (a) conducting a follow-up assessment mission to Liberia and neighbouring

¹³⁰ *Ibid.*

¹³¹ S/RES/1395 (27 February 2002), operative paragraph 3 (deciding to re-establish the Panel of Experts, for a period of five weeks); S/RES/1408 (6 May 2002), operative paragraph 16 (requesting the Secretary-General to establish for a period of three months a Panel of Experts consisting of no more than five members); S/RES/1458 (28 January 2003), operative paragraph 3 (deciding to re-establish the Liberia Panel of Experts, for a period of three months); S/RES/1478 (6 May 2003), operative paragraph 25 (requesting the Secretary-General to establish for a period of five months a Panel of Experts of up to six members).

¹³² S/RES/1343 (7 March 2001), operative paragraph 19(a).

¹³³ S/RES/1343 (7 March 2001), operative paragraph 19(b).

¹³⁴ S/RES/1343 (7 March 2001), operative paragraph 19(c).

¹³⁵ S/RES/1343 (7 March 2001), operative paragraph 19(d).

¹³⁶ S/RES/1343 (7 March 2001), operative paragraph 19(e).

¹³⁷ S/RES/1343 (7 March 2001), operative paragraph 19(f).

¹³⁸ S/RES/1343 (7 March 2001), operative paragraph 20. This task has subsequently been reaffirmed upon each “re-establishment” and “establishment” of the Panel. See: S/RES/1408 (6 May 2002), operative paragraph 17; S/RES/1458 (28 January 2003), operative paragraph 5; S/RES/1478 (6 May 2003), operative paragraph 26.

States in order to investigate and compile a brief independent audit of the Liberian Government's compliance with the Council's demands under the sanctions régime, as well as of any violations of the sanctions and to report to the Council with its observations and recommendations on those matters;¹³⁹ (b) conducting a further follow-up assessment mission to Liberia and neighbouring States, reporting on the Liberian Government's compliance with the Council's demands under the sanctions régime, on the potential economic, humanitarian and social impact of the sanctions, and on any violations of the sanctions;¹⁴⁰ (c) conducting a further follow-up assessment mission to Liberia and neighbouring States, reporting on the Liberian Government's compliance with the Council's demands under the sanctions régime and on any violations of the sanctions;¹⁴¹ (d) reviewing audits of how the Liberian Government was utilizing its revenue from shipping and timber;¹⁴² (e) conducting a further follow-up assessment mission to Liberia and neighbouring States, reporting on the Liberian Government's compliance with the Council's demands under the sanctions régime and on any violations of the sanctions;¹⁴³ (f) investigating whether any revenues of the Liberian Government were being used in violation of the sanctions régime;¹⁴⁴ (g) assessing the possible humanitarian and socio-economic impact of the logging sanctions and making recommendations through the 1343 Committee on how to minimize any such impact;¹⁴⁵ and (h) reporting to the Council through the Committee with its observations and

¹³⁹ S/RES/1395 (27 February 2002), operative paragraph 4.

¹⁴⁰ S/RES/1395 (27 February 2002), operative paragraph 4.

¹⁴¹ S/RES/1458 (28 January 2003), operative paragraph 4

¹⁴² *Ibid.*

¹⁴³ S/RES/1478 (6 May 2003), operative paragraph 25(a).

¹⁴⁴ S/RES/1478 (6 May 2003), operative paragraph 25(b).

¹⁴⁵ S/RES/1478 (6 May 2003), operative paragraph 25(c).

recommendations on how to improve the effectiveness of implementing and monitoring the sanctions.¹⁴⁶

In the course of its various mandates, the Liberia Panel of Experts submitted four reports to the Security Council.¹⁴⁷ In its reports the Panel outlined detailed findings on the implementation and violation of the various components of the 1343 Liberia sanctions régime, providing numerous recommendations for further action by the Security Council.¹⁴⁸

9.4.7 The Team and Panel of Experts on Somalia

The Security Council first expressed its intention to establish a mechanism to generate independent information on violations of the sanctions against Somalia and to improve the implementation of the sanctions in March 2001.¹⁴⁹ Two months later it requested the Secretary-General to establish a team of two experts to prepare for the establishment of a subsequent Panel of Experts on the implementation of the Somalia arms embargo.¹⁵⁰ The preparatory team's mandate included: a) investigating violations of the embargo; b) detailing information on violations and the enforcement of the embargo; c) undertaking field research in Somalia and its neighbour States; d) assessing the capacity

¹⁴⁶ S/RES/1478 (6 May 2003), operative paragraph 25(d).

¹⁴⁷ S/2001/1015 (26 October 2001), enclosure: *Report of the Panel of Experts pursuant to Security Council resolution 1343 (2001), paragraph 19, concerning Liberia* (hereafter "First report of the Panel of Experts on Liberia"); S/2002/470 (19 April 2002), annex: *Report of the Panel of Experts appointed pursuant to Security Council resolution 1395 (2002), paragraph 4, in relation to Liberia* (hereafter "Second report of the Panel of Experts on Liberia"); S/2002/1115 (25 October 2002), annex: *Report of the Panel of Experts appointed pursuant to Security Council resolution 1408 (2002), paragraph 16, concerning Liberia* (hereafter "Third report of the Panel of Experts on Liberia"); S/2003/498 (24 April 2003), annex: *Report of the Panel of Experts appointed pursuant to paragraph 4 of Security Council resolution 1458 (2003), concerning Liberia* (hereafter "Fourth report of the Panel of Experts on Liberia").

¹⁴⁸ For discussion of the findings and recommendations of the Liberia Panel of Experts, see the study of the second Liberian sanctions régime located in the Appendices.

¹⁴⁹ S/PRST/2002/8 (28 March 2002): *Presidential statement of 28 March 2002*.

¹⁵⁰ S/RES/1407 (3 May 2002), operative paragraph 1.

of States in the region to implement the embargo fully; and e) providing recommendations on practical steps for strengthening the enforcement of the embargo.¹⁵¹ The preparatory team submitted its report in early-July 2002.¹⁵² It noted that there had been a common perception that the embargo had not been enforced effectively,¹⁵³ and it suggested that the Council could take the following steps in order to improve the embargo's enforcement: a) clarifying the scope of the embargo, making it clear that the provision of financing and services in support of military activities in Somalia constituted a violation of the embargo;¹⁵⁴ b) enhancing end-user verification;¹⁵⁵ c) establishing a Panel of Experts in the region;¹⁵⁶ and d) promoting transparency and accountability over financial institutions in Somalia.¹⁵⁷

In late-July 2002, shortly after the publication of the preparatory team's report, the Security Council requested the Secretary-General to establish a Panel of Experts on the Somalia embargo, consisting of three members, for a period of six months.¹⁵⁸ Upon the expiration of the Panel's mandate, the Council re-established it for a further six months.¹⁵⁹ The Panel's initial mandate was practically identical to that of the preparatory team,¹⁶⁰ with the following additional tasks: a) taking into account the recommendations of the team of

¹⁵¹ *Ibid.*

¹⁵² S/2002/722 (3 July 2002), annex: *Report of the team of experts appointed pursuant to Security Council resolution 1407 (2002), paragraph 1, concerning Somalia.*

¹⁵³ *Ibid.*, paragraph 27.

¹⁵⁴ *Ibid.*, paragraphs 63-68.

¹⁵⁵ *Ibid.*, paragraphs 69-71.

¹⁵⁶ *Ibid.*, paragraphs 72-79.

¹⁵⁷ *Ibid.*, paragraphs 80-81.

¹⁵⁸ S/RES/1425 (22 July 2002), operative paragraph 3.

¹⁵⁹ S/RES/1474 (8 April 2003), operative paragraph 3. The Council requested the Secretary-General to appoint up to four experts in operative paragraph 4 of the same resolution. The Secretary-General circulated a letter on 30 April 2003 detailing the appointments made: see S/2003/515 (1 May 2003).

¹⁶⁰ S/RES/1425 (22 July 2002), operative paragraph 3.

experts on methodology;¹⁶¹ b) notifying the Council, through the 751 Committee, of any lack of cooperation it experienced in conducting its work;¹⁶² c) briefing the Chairman of the 751 Committee prior to his scheduled mission to the region;¹⁶³ and d) providing an oral briefing to the Council, through the Committee, in November 2002.¹⁶⁴

The Panel of Experts on Somalia submitted its report in March 2003,¹⁶⁵ concluding that the arms embargo had “no normative value” due to the fact that it had been consistently violated since its imposition. It therefore recommended that the Security Council and the 751 Committee should send a clear signal that in future the embargo would be enforced vigorously and violators penalised.¹⁶⁶ Among the Panel’s concrete recommendations were that: a) a system should be created to prevent the forging and abuse of end-user certificates for arms sales;¹⁶⁷ b) the 751 Committee should draw up a list of individuals deemed to be in violation of the arms embargo, against whom financial sanctions might be implemented;¹⁶⁸ c) targeted travel sanctions might be implemented against those individuals who had been violating the embargo and against whom financial sanctions either have not been effective or would be unlikely to be effective;¹⁶⁹ d) where individuals who systematically violate the embargo are closely affiliated with political institutions, their representative privileges could

¹⁶¹ S/RES/1425 (22 July 2002), operative paragraph 5.

¹⁶² S/RES/1425 (22 July 2002), operative paragraph 9.

¹⁶³ S/RES/1425 (22 July 2002), operative paragraph 10.

¹⁶⁴ *Ibid.* The Panel provided such a briefing on 14 November 2002: see S/PRST/2002/35 (12 December 2002): *Presidential statement of 12 December 2002* [expressing the Council’s appreciation for the Panel’s oral briefing].

¹⁶⁵ S/2003/223 (25 March 2003), enclosure: *Report of the Panel of Experts on Somalia pursuant to Security Council resolution 1425* (2002).

¹⁶⁶ *Ibid.*, paragraphs 172-175.

¹⁶⁷ *Ibid.*, paragraph 187.

¹⁶⁸ *Ibid.*, paragraph 188.

¹⁶⁹ *Ibid.*, paragraph 189.

be revoked;¹⁷⁰ and e) the Panel's mandate should be extended for six months in order to investigate further violations of the embargo and to organize a Somali-based effort to identify and impede embargo violators.¹⁷¹

In April 2003, when the Security Council re-established the Panel, it bestowed upon it the following tasks: a) focussing on ongoing violations of the embargo, including transfers of ammunition, single use weapons and small arms; b) identifying those who continued to violate the embargo inside and outside Somalia, as well as their active supporters, and to provide the 751 Committee with a draft list for possible future actions; c) exploring the possibility of establishing a monitoring mechanism for the implementation of the embargo, with partners inside and outside Somalia, in cooperation with regional and international organizations, including the AU; d) refining the recommendations provided in the Panel's first report;¹⁷² and e) providing a briefing, through the 751 Committee, to the Council on its work in the middle of its term and submitting a report, again through the Committee, at the end of its mandated period.¹⁷³

9.4.8 The Liberia III Panel of Experts

In December 2003, at the same time that it initiated the third Liberian sanctions régime, the Council also requested the Secretary-General to establish a Panel of Experts for a period of five months.¹⁷⁴ The mandate of the Panel, which was to consist of up to five members, included: (a) conducting an assessment mission to Liberia and neighbouring States

¹⁷⁰ *Ibid*, paragraph 190.

¹⁷¹ *Ibid*, paragraph 191.

¹⁷² S/RES/1474 (8 April 2003), operative paragraph 3.

¹⁷³ S/RES/1474 (8 April 2003), operative paragraph 7.

¹⁷⁴ S/RES/1521 (22 December 2003), operative paragraph 22.

and to report on the implementation of the Liberian sanctions, including on violations involving rebel movements and neighbouring States, as well as on information relevant to the designation of individuals to be subject to travel sanctions and concerning various sources of funding for the illicit trade of arms;¹⁷⁵ (b) assessing progress towards the goals of the sanctions;¹⁷⁶ and (c) reporting to the Council through the 1521 Committee with observations and recommendations, including how to minimize any humanitarian and socio-economic impact of the timber sanctions.¹⁷⁷

9.4.9 The DRC Group of Experts

In March 2003 the Security Council requested the Secretary-General to establish for a period of approximately three months a Group of Experts on the DRC sanctions.¹⁷⁸ The mandate of the Group, which was to consist of no more than four experts, included: (a) analysing information gathered by the United Nations Organization Mission in the DRC (MONUC) regarding the implementation of the sanctions;¹⁷⁹ (b) gathering and analysing information gathered in the DRC and other countries regarding the flow of arms and related matériel, as well as on networks operating in violations of the sanctions;¹⁸⁰ (c) recommending measures to improve the capacity of States to implement the sanctions;¹⁸¹ (d) reporting to the Council with recommendations and through the 1533 Committee on the

¹⁷⁵ S/RES/1521 (22 December 2003), operative paragraph 22(a).

¹⁷⁶ S/RES/1521 (22 December 2003), operative paragraph 22(b).

¹⁷⁷ S/RES/1521 (22 December 2003), operative paragraph 22(c).

¹⁷⁸ S/RES/1533 (12 March 2004), operative paragraph 10.

¹⁷⁹ S/RES/1533 (12 March 2004), operative paragraph 10(a). For discussion of MONUC's monitoring role, see section 9.6, below.

¹⁸⁰ S/RES/1533 (12 March 2004), operative paragraph 10(b).

¹⁸¹ S/RES/1533 (12 March 2004), operative paragraph 10(c).

implementation of the sanctions;¹⁸² (e) keeping the 1533 Committee abreast of its activities;¹⁸³ (f) exchanging with MONUC information that would facilitate MONUC's monitoring mandate;¹⁸⁴ and (g) providing the 1533 Committee with a list of individuals who had violated the sanctions, as well as of those who had supported those individuals.¹⁸⁵

9.5 Monitoring Mechanisms

The Security Council has established monitoring mechanisms to monitor the implementation of sanctions in connection with four of its sanctions régimes, including those against Iraq, UNITA, the Taliban & Al Qaida, and Somalia. Although Monitoring Mechanisms have generally been established with short-term mandates, in practice they have tended to serve for longer periods than the various expert bodies. Like expert bodies, however, Monitoring Mechanisms are technically subsidiary organs of the Council, with a responsibility to report on their activities. They generally report to the Council via the relevant Sanctions Committee, with the Chairman of that Sanctions Committee forwarding or presenting regular written and oral reports to the Council on their behalf.

9.5.1 The Iraq Export/Import Monitoring Mechanism

In the case of Iraq, the Security Council established an export/import monitoring mechanism. In October 1991, the Council requested the 661 Committee to develop, in cooperation with UNSCOM and the IAEA, a mechanism to monitor sales or supplies to Iraq of items that could be used for the production or acquisition of weapons, in

¹⁸² S/RES/1533 (12 March 2004), operative paragraph 10(d).

¹⁸³ S/RES/1533 (12 March 2004), operative paragraph 10(e).

¹⁸⁴ S/RES/1533 (12 March 2004), operative paragraph 10(f).

¹⁸⁵ S/RES/1533 (12 March 2004), operative paragraph 10(g).

contravention of the arms and related sanctions.¹⁸⁶ In July 1995 the 661 Committee approved a joint-proposal for that mechanism submitted by UNSCOM and the IAEA.¹⁸⁷ The proposal for the mechanism was then submitted to the Security Council for its consideration, and in March 1996 the Council decided to establish the mechanism.¹⁸⁸ The monitoring mechanism consisted of a Joint Export/Import Monitoring Unit established by UNSCOM and the IAEA, and all States were required to notify the mechanism if their nationals planned to export to Iraq any items or technologies that might have “dual-use” potential.¹⁸⁹ Iraq was also required to inform the mechanism of any plans to receive potential “dual-use” items or technologies.¹⁹⁰

When the Security Council established UNMOVIC, it requested the Executive Chairman of UNMOVIC and the Director-General of the IAEA to establish a unit which would assume the monitoring mechanism’s responsibilities and to resume the revision and updating of the lists of items and technology to which the mechanism applied and thus the export to Iraq of which must be notified to the unit.¹⁹¹ The updated list, which was circulated by the Executive-Chairman of UNMOVIC in June 2001,¹⁹² came into effect on 13 July 2001.¹⁹³ In its quarterly reports to the Council, UNMOVIC generally summarized the unit’s activities during the reporting period. On the whole those activities consisted of reviewing

¹⁸⁶ S/RES/715 (11 October 1995), operative paragraph 7.

¹⁸⁷ S/1996/700 (26 August 1996), annex: *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, annex, paragraph 32 (page 8).

¹⁸⁸ S/RES/1051 (27 March 1996), operative paragraph 1.

¹⁸⁹ S/RES/1051 (27 March 1996), operative paragraph 5.

¹⁹⁰ S/RES/1051 (27 March 1996), operative paragraph 6.

¹⁹¹ S/RES/1284 (17 December 1999), operative paragraph 8.

¹⁹² S/2001/560 (15 October 2001): *Letter dated 1 June 2001 from the Executive Chairman of UNMOVIC addressed to the President of the Security Council*.

notifications sent to it by States. The Unit also reviewed the distribution plans for the Oil-for-Food programme to ensure that they contained no “prohibited” items.¹⁹⁴ After the adoption of the Goods Review List (GRL) by the Council in May 2002,¹⁹⁵ the unit’s work increased substantially as it was involved in the process of reviewing applications to export humanitarian supplies to Iraq under the Oil-for-Food programme to ensure that the items or technologies proposed to be supplied to Iraq did not feature on the GRL.¹⁹⁶

9.5.2 The UNITA Monitoring Mechanism

The Security Council requested the Secretary-General to establish a monitoring mechanism on the UNITA sanctions in April 2000, after the UNITA Panel of Experts had recommended that such a monitoring mechanism be created.¹⁹⁷ The monitoring mechanism was to continue the work of the Panel of Experts by collecting additional information on, and investigating relevant leads relating to, allegations of violations of the UNITA sanctions.¹⁹⁸ It would consist of up to five experts and it would have a time-bound mandate of six months.¹⁹⁹ After its initial establishment, the mandate of the UNITA monitoring mechanism was extended five times, for one period of three months, three subsequent periods of six

¹⁹³ S/2001/833 (30 August 2001), annex: *Sixth quarterly report of the Executive-Chairman of UNMOVIC*, paragraph 7.

¹⁹⁴ See, e.g., S/2002/195 (26 February 2002), annex: *Eighth quarterly report of the Executive-Chairman of UNMOVIC*, paragraph 13.

¹⁹⁵ The GRL was adopted by the Council in resolution 1409 (2002): S/RES/1409 (14 May 2002), operative paragraphs 2-3. For further details on the GRL process, see the case-study on Iraq.

¹⁹⁶ See, e.g., S/2002/606 (31 May 2002), annex: *Ninth quarterly report of the Executive-Chairman of UNMOVIC*, paragraphs 20-21; S/2002/981 (3 September 2002), annex: *Tenth quarterly report of the Executive-Chairman of UNMOVIC*, paragraph 28.

¹⁹⁷ S/RES/1295 (18 April 2000), operative paragraph 3.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

months, and a final period of two months.²⁰⁰ The size of the mechanism contracted over the course of its mandates, consisting of five experts for the second and third mandates, four experts for the fourth and fifth mandates, and two experts for the final mandate.²⁰¹

During the course of its two-and-a-half-year tenure, the monitoring mechanism submitted a total of six reports.²⁰² Among the monitoring mechanism's major initiatives, it:

- (a) Identified individuals and companies involved in activities that violated, or promoted violation of, the UNITA sanctions;
- (b) Identified States that had been complicit in activities that violated, or promoted violation of, the UNITA sanctions;
- (c) Commissioned a professional asset tracer to investigate the flow of UNITA's financial assets; and
- (d) Identified, and monitored the activities of, individuals and non-governmental organisations who appeared to have been acting as foreign representatives of UNITA.²⁰³

Among the major recommendations made by the monitoring mechanism have been that:

²⁰⁰ See: S/RES/1336 (23 January 2001), operative paragraph 3 [extending the mechanism's mandate for three months]; S/RES/1348 (19 April 2001), operative paragraph 3 [extending the mechanism's mandate for six months]; S/RES/1374 (19 October 2001), operative paragraph 3 [extending the mechanism's mandate for a further six months]; S/RES/1404 (18 April 2002), operative paragraph 3 [extending the mechanism's mandate for a further six months]; S/RES/1439 (18 October 2002), operative paragraph 2 [deciding to extend the mechanism's mandate for a further two months].

²⁰¹ See: S/RES/1336 (23 January 2001), operative paragraph 5 [requesting the Secretary-General to reappoint five experts to the monitoring mechanism]; S/RES/1348 (19 April 2001), operative paragraph 5 [requesting the Secretary-General to appoint five experts to the monitoring mechanism]; S/RES/1374 (19 October 2001), operative paragraph 7 [requesting the Secretary-General to appoint four experts to the monitoring mechanism]; S/RES/1404 (18 April 2002), operative paragraph 6 [requesting the Secretary-General to appoint four experts to the monitoring mechanism]; S/RES/1439 (18 October 2002), operative paragraph 5 [requesting the Secretary-General to appoint two experts to the monitoring mechanism].

²⁰² S/2000/1225 (21 December 2000), enclosure: *Final Report of the Monitoring Mechanism on Angola Sanctions*; S/2001/363 (18 April 2001), enclosure: *Addendum to the final report of the Monitoring Mechanism on Sanctions against UNITA*; S/2001/966 (12 October 2001), enclosure: *Supplementary report of the Monitoring Mechanism on Sanctions against UNITA*; S/2002/486 (26 April 2002), annex: *Additional report of the Monitoring Mechanism on Sanctions against UNITA*; S/2002/1119 (16 October 2002), annex: *Additional report of the Monitoring Mechanism on Sanctions against UNITA*; S/2002/1339 (10 December 2002), annex: *Final report of the Monitoring Mechanism on Sanctions against UNITA*.

(a) Better networks of regulatory bodies should be established in the spheres most relevant to the effective implementation of sanctions – for instance, the establishment of an effective international regulatory régime for diamonds, and the promotion of better cooperation among SADC Member States in the implementation, monitoring and enforcement of the UNITA sanctions; and (b) The Security Council should establish a permanent mechanism to monitor its sanctions.²⁰⁴

9.5.3 The Taliban & Al Qaida Monitoring Mechanism

In July 2001, on the recommendation of the Taliban & Al Qaida Committee of Experts, the Security Council requested the Secretary-General to establish a monitoring mechanism.²⁰⁵ The monitoring mechanism's mandate was initially for a period of five and a half months, to coincide with the period remaining before the initial expiry of the sanctions then being applied against the Taliban and Usama Bin Laden.²⁰⁶ Following the establishment of the monitoring mechanism, the mandate of the Monitoring Group was extended for two further periods of twelve months.²⁰⁷ Its final mandate expired in January 2004, when it was replaced by the Analytical Support and Sanctions Monitoring Team ("the 1526 Monitoring Team").²⁰⁸

²⁰³ For further details of the monitoring mechanism's activities, see the discussion of the UNITA sanctions régime in the Appendices.

²⁰⁴ For further details of the mechanism's recommendations, see the discussion of the UNITA sanctions régime in the Appendices.

²⁰⁵ S/RES/1363 (30 July 2001), operative paragraph 3. For the recommendations of the Taliban & Al Qaida Committee of Experts, see: S/2001/511 (22 May 2001), enclosure: *Report of the Committee of Experts appointed pursuant to Security Council resolution 1333 (2000), paragraph 15 (a), regarding monitoring of the arms embargo against the Taliban and the closure of terrorist training camps in the Taliban-held areas of Afghanistan*.

²⁰⁶ S/RES/1363 (30 July 2001), operative paragraph 3.

²⁰⁷ S/RES/1390 (16 January 2002), operative paragraphs 9, 10; S/RES/1455 (17 January 2003), operative paragraphs 8, 12, 13.

²⁰⁸ For discussion of the 1526 Monitoring Team, see sub-section v., below.

The original mandate of the Taliban & Al Qaida Monitoring Mechanism included the following tasks: (a) Monitoring the implementation of the sanctions;²⁰⁹ (b) Offering assistance to States bordering the territory of Afghanistan under Taliban control, and other States as appropriate, to increase their capacity regarding the implementation of the sanctions;²¹⁰ and (c) Collating, assessing, verifying, and reporting and making recommendations on, information regarding violations of the sanctions.²¹¹ The Monitoring Mechanism was to consist of two bodies: a Monitoring Group and a Sanctions Enforcement Support Team.²¹²

The Sanctions Enforcement Support Team was never actually deployed, however, due to the complex situation that developed on the ground in Afghanistan after 11 September 2001. The Monitoring Group nevertheless functioned as planned, submitting one report on its work in 2001 and three during 2002.²¹³ The reports contain detailed accounts of the activities of the Monitoring Group during the reporting periods, as well as observations and recommendations for improving the implementation of the sanctions. In its reports the Monitoring Group has documented thoroughly its activities and outlined

²⁰⁹ S/RES/1363 (30 July 2001), operative paragraph 3(a).

²¹⁰ S/RES/1363 (30 July 2001), operative paragraph 3(b).

²¹¹ S/RES/1363 (30 July 2001), operative paragraph 3(c).

²¹² S/RES/1363 (30 July 2001), operative paragraph 4. The Monitoring Group would be based in New York and would consist of up to five experts. Its mandate would be to monitor the implementation of the sanctions, including in the fields of arms embargoes, counter-terrorism and related legislation, as well as money laundering, financial transactions and drug trafficking: S/RES/1363 (30 July 2001), operative paragraph 4(a). The Sanctions Enforcement Support Team would be located in the States neighbouring Afghanistan and would consist of up to fifteen members with expertise in areas such as customs, border security and counter-terrorism: S/RES/1363 (30 July 2001), operative paragraph 4(b). The Sanctions Enforcement Support Team would report at least once a month to the Monitoring Group, and the Monitoring Group would report to the 1267 Committee: S/RES/1363 (30 July 2001), operative paragraph 5.

²¹³ S/2002/65 (15 January 2002), annex: *First Report of the Monitoring Group on Afghanistan Established Pursuant to Security Council Resolution 1363 (2001)*; S/2002/541 (15 May 2002), enclosure: *Report of the Monitoring Group pursuant to Resolution 1390 (2002)*; S/2002/1050 (17 December 2002), enclosure: *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*; S/2002/1338 (17 December 2002), enclosure: *Third report of the Monitoring Group Pursuant to Resolution 1390 (2002)*.

extremely detailed recommendations for improving the implementation of the various sanctions against the Taliban and Al Qaida. Thus, the Group has outlined specific recommendations for: a) improving the operation of the consolidated list of individuals and entities subject to sanctions;²¹⁴ b) improving the implementation of the financial sanctions;²¹⁵

²¹⁴ *Report of the Monitoring Group pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 68-73 (recommending that the list of individuals and entities associated with the Taliban, Al Qaida and Bin Laden should contain the minimum criteria needed to enhance implementation, including names according to their “correct cultural construction”, so that they could be recognized by implementing authorities, and as many “identifiers” as possible, to avoid potential cases of mistaken identity, that it should be produced in all of the official languages of the United Nations, and that it should be disseminated as widely as possible to ensure implementation); *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 126-133 (recommending that: the United Nations consolidated list should be used by all States as an authoritative reference for the implementation of sanctions against the Taliban, Al Qaida and Usama Bin Laden and their associates; the list should be updated regularly and States should submit to the 1267 Committee for possible addition to the list the names and identifying information of all persons believed to be members of or associated with Al Qaida or the Taliban; States should assist the 1267 Committee in better identifying individuals or entities already on the list, providing confirmation of details such as date and place of birth, passport numbers for all known nationalities and physical description; and the 1267 Committee should establish a mechanism capable of responding immediately to inquiries concerning the identification of persons being detained as suspected members or associates of Al Qaida or the Taliban); *Third report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 95-98 (recommending that: the list be issued in a revised format; and that all individuals known to have attended Al Qaida training camps must be considered suspected terrorists and their names should be submitted for designation on the list).

²¹⁵ *Report of the Monitoring Group pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 74-5 (recommending that States should become parties to the International Convention for the Suppression of the Financing of Terrorism, and that States involved in the trade of rough diamonds should participate in the Kimberley Process); *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 134-143 (recommending that: States should assist each other as much as possible in the investigation and sharing of intelligence concerning individuals believed to be members or associates of Al Qaida or the Taliban, in order to ensure that the application and maintenance of financial sanctions is justified; bank secrecy rules should not be an obstacle to the provision to the Monitoring Group of information requested by it concerning individuals and entities alleged to have links to Al Qaida; the 1267 Committee should establish procedures regarding the possible granting of humanitarian exceptions to the sanctions; States should review their laws and procedures regarding oversight of charities, in order to ensure that they are not used to funnel funds to individuals and entities associated with Al Qaida and the Taliban; banking institutions submit to appropriate national authorities reports on suspicious transactions; and that an international organization should be granted responsibility for working with States to ensure that *hawala* and other alternative systems for the transfer of money are not exploited or misused by terrorists); *Third report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 99-102 (recommending that assets belonging to individuals and entities on the list should not be released without prior approval from the 1267 Committee; and that Member States should be encouraged to introduce mechanisms to enable

c) improving the implementation of the arms sanctions;²¹⁶ d) improving the implementation of the travel sanctions;²¹⁷ and e) increasing the number of reports received from States on measures taken to implement the sanctions.²¹⁸

9.5.4 The Somalia Monitoring Group

In December 2003, the Council requested the Secretary-General to establish a Monitoring Group connected with the Somalia sanctions régime for a period of 6 months.²¹⁹ The Somalia Monitoring Group's mandate included: (a) investigating violations of the arms embargo;²²⁰ (b) making recommendations for strengthening the implementation of the arms

the monitoring of electronic transfers, and particularly of international transfers, in order to detect suspicious activity).

²¹⁶ *Report of the Monitoring Group pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 76-78 (recommending that arms-producing States should become members of the Wassenaar Arrangement, work towards the standardization of "end-user" certificates, and register and license all nationals operating as arms brokers or dealers); *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 146-151 (recommending that States should take steps to require the registration of all arms brokers dealing from their territories, to criminalize the operation of non-registered arms brokers, and to ensure the strict use of end-user certificates in any transactions involving the provision of arms and related matériel); *Third report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 105-107 (recommending that Member States should be encouraged: to become party to the 1991 Montreal Convention and the 1997 International Convention for the Suppression of Terrorist Bombings; to participate in the "Container Security Initiative"; and to adopt the recommendations made by the Secretary-General in his report dated 20 September 2002 on small arms). For the report of the Secretary-General on small arms, see: S/2002/1053 (20 September 2002): *Report of the Secretary-General on small arms*.

²¹⁷ *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 144-145 (recommending that: States should ensure that their border control officials are given adequate resources, training and technology to improve their ability to detect falsified documents; and the 1267 Committee should issue guidelines to States on action to be taken in the event that a designated individual attempts to enter or transit their territory); *Third report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 103-104 (recommending that: the 1267 Committee consider all individuals on the consolidated list to be actual or suspected Al Qaida terrorists, so that Member States can detain, prosecute or extradite them to another country that has issued a warrant or return them for detention in their country of origin; and that Member States should put in place appropriate measures to comply fully with the travel sanctions).

²¹⁸ *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 213, paragraphs 152-153 (recommending that the 1267 Committee should encourage those States which had not yet complied with their obligation to submit such reports to do so).

²¹⁹ S/RES/1519 (16 December 2003), operative paragraph 2.

²²⁰ S/RES/1519 (16 December 2003), operative paragraph 2(a).

embargo;²²¹ (c) carrying out field investigations in Somalia, neighbouring States and other appropriate States;²²² (d) assessing progress made by States in the region in implementing the arms embargo, including through a review of national customs and border control régimes;²²³ (e) reporting with a draft list of those who continued to violate the arms embargo inside and outside Somalia, for possible future measures by the Council;²²⁴ and (f) making recommendations based on its investigations and the previous reports of the Somalia Panel of Experts.²²⁵

9.5.5 The Analytical Support and Sanctions Monitoring Team (“the 1526 Monitoring Team”)

In January 2004, the Council decided to establish for a period of eighteen months an Analytical Support and Sanctions Monitoring Team.²²⁶ The mandate of “the 1526 Monitoring Team”, which would comprise up to eight experts, included: (a) submitting written reports to the 1267 Committee on the implementation of the Taliban/Al Qaida sanctions, including concrete recommendations;²²⁷ (b) analysing reports submitted by States pursuant to resolution 1455 (2003);²²⁸ (c) facilitating areas of convergence between the 1267 Committee and the Counter-Terrorism Committee;²²⁹ (d) reporting to the 1267

²²¹ S/RES/1519 (16 December 2003), operative paragraph 2(b).

²²² S/RES/1519 (16 December 2003), operative paragraph 2(c).

²²³ S/RES/1519 (16 December 2003), operative paragraph 2(d).

²²⁴ S/RES/1519 (16 December 2003), operative paragraph 2(e).

²²⁵ S/RES/1519 (16 December 2003), operative paragraph 2(f).

²²⁶ S/RES/1526 (30 January 2004), operative paragraph 6.

²²⁷ S/RES/1526 (30 January 2004), operative paragraph 7.

²²⁸ S/RES/1526 (30 January 2004), Annex.

²²⁹ *Ibid.*

Committee on a regular basis,²³⁰ and (e) assisting the 1267 Committee in preparing its oral and written reports to the Council.²³¹

9.6 United Nations Operations

The Council has called upon United Nations Operations to play a role in the implementation and monitoring of sanctions in connection with the sanctions régimes against Somalia, Liberia, the Federal Republic of Yugoslavia, and certain actors in the DRC.

In the case of Somalia, when the Council established the second U.N. operation to undertake activities in that country – the United Nations Operation in Somalia II (UNOSOM II) – it requested the Secretary-General to support the implementation of the Somalia sanctions régime from within Somalia, utilizing as available and appropriate the forces of UNOSOM II.²³² Although the Secretary-General did not subsequently report exclusively or explicitly on the actions taken by UNOSOM II to implement the embargo, he nevertheless referred consistently to actions taken by the Operation to bring about the disarmament of the various factions within Somalia – activities which were linked to the overall objectives of the arms embargo.²³³

²³⁰ *Ibid.*

²³¹ *Ibid.*

²³² S/RES/814 (26 March 1993), operative paragraph 10. For the provisions establishing UNOSOM II, see: S/RES/814 (26 March 1993), operative paragraphs 5, 6. For UNOSOM II's full mandate, see: S/25354 and Add. 1 and 2 (3, 11 and 22 March 1993): *Further report of the Secretary-General pursuant to paragraphs 18 and 19 of resolution 794 (1992) on the situation in Somalia*, paragraphs 56-88 [proposing a detailed mandate for UNOSOM II, which was subsequently endorsed by the Council in paragraph 5 of resolution 814 (1993)].

²³³ See, e.g., S/26317 (17 August 1993): *Further report of the Secretary-General submitted in pursuance of paragraph 18 of resolution 814 (1993)*, paragraphs 14-18; S/26738 (12 November 1993): *Further report of the Secretary-General submitted in pursuance of paragraph 19 of resolution 814 (1993) and paragraph A 5 of resolution 865 (1993)*, paragraphs 38-40, 83-84.

In the case of the sanctions régime against Liberia (in the first instance), September 1993 the Council entrusted the United Nations Observer Mission in Liberia (UNOMIL), with the responsibility for assisting in monitoring compliance with the arms embargo.²³⁴ In November 1995, when the Council adjusted UNOMIL's mandate, it again requested the Operation to monitor compliance with the arms embargo and to verify its impartial application.²³⁵

In the case of the sanctions régime against the Federal Republic of Yugoslavia to address the situation in Kosovo, in July 1998, the Council decided that the United Nations Preventive Deployment Force (UNPREDEP), which was based in the former Yugoslav Republic of Macedonia, would monitor and report on illicit arms flows and other activities prohibited by the Kosovo sanctions régime.²³⁶

In the case of the DRC, when the Council first imposed sanctions in July 2003 it requested the United Nations Organization Mission in the DRC (MONUC) to deploy military observers in North and South Kivu and in Ituri and to report to it regularly on information concerning arms supply and the presence of foreign military.²³⁷ In March 2004

²³⁴ S/RES/866 (22 September 1993), operative paragraph 3(b). UNOMIL was established by operative paragraph 2 of the same resolution. Its mandate was extended on several occasions, but it was eventually terminated in September 1997. For the Council's decisions in relation to UNOMIL's mandate, see: S/RES/911 (21 April 1994), operative paragraph 2; S/RES/950 (21 October 1994), operative paragraph 2; S/RES/972 (13 January 1995), operative paragraph 2; S/RES/985 (13 April 1995), operative paragraph 1; S/RES/1001 (30 June 1995), operative paragraph 3; S/RES/1014 (15 September 1995), operative paragraph 2; S/RES/1020 (10 November 1995), operative paragraph 2; S/RES/1041 (29 January 1996), operative paragraph 2; S/RES/1059 (31 May 1996), operative paragraph 2; S/RES/1071 (30 August 1996), operative paragraph 2; S/RES/1083 (27 November 1996), operative paragraph 4; S/RES/1100 (27 March 1997), operative paragraph 1; S/RES/1116 (27 June 1997), operative paragraph 1. Ultimately UNOMIL was terminated on 30 September 1997, as foreshadowed on the last occasion on which its mandate was extended: S/RES/1116 (27 June 1997), operative paragraph 1.

²³⁵ S/RES/1020 (10 November 1995), operative paragraph 2(c).

²³⁶ S/RES/1186 (1998) (21 July 1998), operative paragraph 1.

²³⁷ S/RES/1493 (28 July 2003), operative paragraph 19.

the Council expanded MONUC's sanctions monitoring role, requesting it to use all means to inspect the cargo of aircraft and any transport vehicle using the ports, airports, military bases and border crossings in North and South Kivu and in Ituri.²³⁸ At the same time, the Council also authorized MONUC to seize arms and related matériel violating the DRC sanctions.²³⁹

9.7 Security Council missions

The Security Council has also included responsibilities relating to the monitoring of sanctions in the terms of reference of a Security Council mission, doing so for a mission dispatched to Kosovo in April 2000 to investigate the implementation of resolution 1244 (1999). In that instance, the overall purpose of the mission was to enhance support for the implementation of the Council's decisions addressing the situation in Kosovo, but one component of the mission's terms of reference was to review the ongoing implementation of the sanctions.²⁴⁰

²³⁸ S/RES/1533 (12 March 2004), operative paragraph 3.

²³⁹ S/RES/1533 (12 March 2004), operative paragraph 4.

²⁴⁰ For the decision to send the mission, as well as the mission's terms of reference, see: S/2000/320 (14 April 2000): *Letter dated 14 April 2000 from the President of the Security Council addressed to the Secretary-General* and annex. For the report on the mission's activities, submitted to the Council upon the mission's return to headquarters, see: S/2000/363 (29 April 2000): *Report of the Security Council mission on the implementation of Security Council resolution 1244 (1999)*.

10. *Bestowing responsibility upon other international actors for sanctions monitoring and enforcement*

In addition to delegating responsibilities to its own subsidiary organs, the Council has also called upon various international actors to perform sanctions-related tasks, including the Secretary-General and the U.N. Secretariat, States with a particular relationship with or proximity to the target of a sanctions régime, and regional organizations.

10.1 The U.N. Secretary-General

The Secretary-General has been called upon to undertake a wide variety of tasks in relation to the administration, implementation and monitoring of U.N. sanctions régimes. The responsibilities requested, invited or required of the Secretary-General fall into four broad categories: (a) administration and coordination; (b) planning; (c) monitoring and evaluation; and (d) implementation.

10.1.1 Administration and Coordination

The Secretary-General has been requested to undertake a range of responsibilities connected with the administration and coordination of efforts designed to facilitate the implementation of sanctions. Those responsibilities have included providing support to the Council and its subsidiary organs, establishing subsidiary bodies connected with sanctions, and coordinating activities designed to facilitate the implementation or enforcement of sanctions.

i. Providing administrative support

The Secretary-General has provided administrative support in relation to almost all of the sanctions régimes. Among the support activities requested of the Secretary-General

by the Council have been the following responsibilities: receiving reports from States on measures taken to implement sanctions;¹ providing assistance to Sanctions Committees in the discharge of their tasks, including making the necessary arrangements in the Secretariat for that purpose;² liaising with the relevant Sanctions Committee concerning the implementation of a humanitarian programme designed to address the humanitarian consequences of sanctions;³ publicizing information on violations of the sanctions;⁴ publicizing the provisions imposing sanctions;⁵ developing an information package and media

¹ In connection with the Southern Rhodesia sanctions régime, see: S/RES/232 (16 December 1966), operative paragraph 8 (implicit); S/RES/253 (29 May 1968), operative paragraph 18 (implicit); S/RES/277 (18 March 1970), operative paragraph 19 (implicit). In connection with the Libya sanctions régime, see: S/RES/748 (31 March 1992), operative paragraph 8; S/RES/883 (11 November 1993), operative paragraph 13 (implicit). In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 12 (implicit). In connection with the Haiti sanctions régime, see: S/RES/841 (16 June 1993), operative paragraph 13. In connection with the Sudan sanctions régime, see: S/RES/1054 (26 April 1996), operative paragraph 7 (implicit). In connection with the Sierra Leone sanctions régime, see: S/RES/1132 (8 October 1997), operative paragraph 13 (implicit). In connection with the Ethiopia and Eritrea sanctions régime, see: S/RES/1298 (17 May 2000), operative paragraph 11 (implicit).

² In connection with the Southern Rhodesia sanctions régime, see: S/RES/314 (28 February 1972), operative paragraph 7; S/RES/318 (28 July 1972), operative paragraph 10. In connection with the South Africa sanctions régime, see: S/RES/421 (9 December 1977), operative paragraph 3. In connection with the Iraq sanctions régime, see: S/RES/661 (6 August 1990), operative paragraph 8. In connection with the sanctions régime against the former Yugoslavia, see: S/RES/724 (15 December 1991), operative paragraph 5(d). In connection with the Libya sanctions régime, see: S/RES/748 (31 March 1992), operative paragraph 11. In connection with the Haiti sanctions régime, see: S/RES/841 (16 June 1993), operative paragraph 14. In connection with the Rwanda sanctions régime, see: S/RES/918 (17 May 1994), operative paragraph 17. In connection with the Sierra Leone sanctions régime, see: S/RES/1132 (8 October 1997), operative paragraph 12. In connection with the sanctions régime against the Federal Republic of Yugoslavia to address the situation in Kosovo, see: S/RES/1160 (31 March 1998), operative paragraph 11; In connection with the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1267 (15 October 1999), operative paragraph 11. In connection with the Ethiopia and Eritrea sanctions régime, see: S/RES/1298 (17 May 2000), operative paragraph 10.

³ In connection with the implementation of the Oil-for-Food Programme, see: S/RES/1284 (17 December 1999), operative paragraph 23 (requesting the Secretary-General to provide Iraq and the 661 Committee with a daily statement of the status of the escrow account established under the Oil-for-Food Programme).

⁴ In connection with the sanctions régime against Liberia (in the first instance), see: S/PRST/1994/33: *Presidential statement of 13 July 1994* (requesting the Secretary-General to ensure that all information on violations of the arms embargo was made promptly available to it and publicised more widely).

⁵ In connection with the Sierra Leone sanctions régime, see: S/RES/1306 (5 July 2000), operative paragraph 24 (requesting the Secretary-General to publicize the provisions of the resolutions

campaign designed to educate the public on sanctions;⁶ making financial arrangements to support the activities of sanctions-related subsidiary bodies;⁷ forwarding to the Council reports of sanctions-related subsidiary bodies;⁸ and playing a role in the administration of exemptions from sanctions régimes.⁹

extending the diamond sanctions, as well as the obligations they imposed). The Council repeated that request in: S/RES/1385 (19 December 2001), operative paragraph 5; S/RES/1446 (4 December 2002), operative paragraph 5.

⁶ In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraph 30.

⁷ In connection with the UNITA sanctions régime, see: S/RES/1237 (7 May 1999), operative paragraph 11 (requesting the Secretary-General to establish a Trust Fund to finance the activities of the expert panels on UNITA, which subsequently became a single Panel of Experts); S/RES/1439 (18 October 2002), operative paragraph 4 (requesting the Secretary-General to close the Trust Fund for the UNITA Panel of Experts and to arrange for the remaining funds to be reimbursed to contributors); In relation to the UNITA monitoring mechanism, see: S/RES/1336 (23 January 2001), operative paragraph 5 (requesting the Secretary-General to make the necessary financial arrangements to support the work of the UNITA monitoring mechanism). That request was repeated in: S/RES/1348 (19 April 2001), operative paragraph 5; S/RES/1374 (19 October 2001), operative paragraph 7; S/RES/1404 (18 April 2002), operative paragraph 6; S/RES/1439 (18 October 2002), operative paragraph 5.

In connection with the Sierra Leone sanctions régime, see: S/RES/1306 (5 July 2000), operative paragraph 19 (requesting the Secretary-General to provide the necessary resources to support the work of the Sierra Leone Panel of Experts).

In connection with the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1363 (30 July 2001), operative paragraph 9 (requesting the Secretary-General to make the necessary arrangements to support the work of the Afghanistan/Taliban/Al Qaida monitoring mechanism, as an expense of the Organization and through a United Nations Trust Fund, and to keep the 1267 Committee informed of the financial arrangements supporting the mechanism); S/RES/1455 (17 January 2003), operative paragraph 10 (requesting the Secretary-General to ensure that the Taliban/Al Qaida Monitoring Group and the 1267 Committee and its Chairman had access to sufficient expertise and resources to discharge their responsibilities).

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 19 (requesting the Secretary-General to provide the necessary resources for the activities of the Liberia Panel of Experts). The Council repeated that request in: S/RES/1478 (6 May 2003), operative paragraph 25.

⁸ In connection with the Rwanda sanctions régime, see: S/RES/1161 (9 April 1998), operative paragraph 7 (requesting the Secretary-General to submit interim and final reports by the Commission of Inquiry on the Rwandan arms embargo).

⁹ The Council requested the Secretary-General to play such a role in connection with the sanctions régimes against Rwanda, Sierra Leone and certain actors in the DRC. In connection with Rwanda, see: S/RES/1011 (16 August 1995), operative paragraph 7 (requesting the Secretary-General to notify Member States of the locations listed by the Government of Rwanda as points of entry through which arms exempt from the embargo might enter the country). In connection with Sierra Leone, see: S/RES/1171 (5 June 1998), operative paragraph 2 (requesting the Secretary-General to receive from the Government of Sierra Leone the list of points of entry through which arms and related *matériel* would be permitted to enter Sierra Leone). In connection with the DRC, see: S/RES/1493 (28 July 2003), operative paragraph 21

ii. Establishing new subsidiary bodies or programmes

Among the Secretary-General's responsibilities for establishing new subsidiary bodies or programmes he has been requested, invited or directed to establish: Commissions,¹⁰ bodies of experts,¹¹ monitoring mechanisms,¹² and financial accounts or

(requesting the Secretary-General to receive notifications from States wishing to take advantage of the exemption for the provision of technical assistance and training for humanitarian or protective non-lethal military equipment).

¹⁰ The Secretary-General has been requested to establish Commissions linked to the sanctions régimes against Iraq and Rwanda. In connection with Iraq, see: S/RES/692 (20 May 1991), operative paragraph 4 (requesting the Secretary-General to implement the Council decision to establish the United Nations Compensation Commission (UNCC)). In connection with Rwanda, see: S/RES/1013 (7 September 1995), operative paragraph 1 (requesting the Secretary-General to establish the International Commission of Inquiry to investigate violations of the Rwandan sanctions régime). The Secretary-General was subsequently requested first to maintain the Commission, then to re-activate it. See: S/RES/1053 (23 April 1996), operative paragraph 2; S/RES/1161 (9 April 1998), operative paragraph 1.

¹¹ The Secretary-General has been requested to establish various bodies of experts in connection with the sanctions régimes against Iraq, Somalia, Sierra Leone, Liberia II, Liberia III and the DRC. In connection with Iraq, see: S/RES/1153 (20 February 1998), operative paragraph 12 (requesting the Secretary-General to establish a group of experts to determine whether Iraq was able to export the permitted amount of oil under the Oil-for-Food Programme); S/RES/1284 (17 December 1999), operative paragraph 30 (requesting the Secretary-General to establish a group of experts, including oil industry experts, to report on Iraq's petroleum production and export capacity and to make recommendations for increasing that capacity). In connection with Somalia, see: S/RES/1407 (3 May 2002), operative paragraph 1 (requesting the Secretary-General to establish a preparatory team of experts on the Somalia embargo); S/RES/1425 (22 July 2002), operative paragraphs 3-4 (requesting the Secretary-General to establish a Panel of Experts on the Somalia embargo); S/RES/1474 (8 April 2003), operative paragraphs 45 (requesting the Secretary-General to implement the Council's decision to re-establish the Somalia Panel of Experts). In connection with Sierra Leone, see: S/RES/1306 (5 July 2000), operative paragraph 19 (requesting the Secretary-General to establish a Panel of Experts on the Sierra Leone sanctions). In connection with Liberia II, see: S/RES/1343 (7 March 2001), operative paragraph 19 (requesting the Secretary-General to establish a Panel of Experts). The Council repeated that request on multiple occasions, after the Panel's previous mandate had elapsed. See: S/RES/1408 (6 May 2002), operative paragraph 16; S/RES/1478 (6 May 2003), operative paragraph 25. In connection with Liberia III, see: S/RES/1521 (22 December 2003), operative paragraph 22 (requesting the Secretary-General to establish a Panel of Experts). In connection with the DRC, see: S/RES/1533 (12 March 2004), operative paragraph 10 (requesting the Secretary-General to create a group of experts on the DRC sanctions).

¹² The Council has requested the Secretary-General to establish monitoring mechanisms in connection with the sanctions régimes against Somalia, UNITA and the Taliban/Al Qaida. In connection with UNITA, see: S/RES/1295 (18 April 2000), operative paragraph 3 (requesting the Secretary-General to establish a monitoring mechanism). In connection with the Taliban/Al Qaida, see: S/RES/1363 (30 July 2001), operative paragraph 3 (requesting the Secretary-General to establish a monitoring mechanism). In connection with Somalia, see: S/RES/1519 (16 December 2003), operative paragraph 2 (requesting the Secretary-General to establish a monitoring group on Somalia).

sources of funding connected to subsidiary bodies or programmes.¹³ The Secretary-General has also been requested to appoint various actors to sanctions-related subsidiary bodies or programmes,¹⁴ and to assign an existing subsidiary body to continue to undertake responsibilities in connection with sanctions monitoring.¹⁵

iii. *Coordinating role*

The Security Council has been requested to undertake a number of responsibilities for the coordination of efforts to improve the implementation, monitoring or enforcement of sanctions, including: coordinating the submission of reports by States and other international

¹³ In connection with the Iraq sanctions régime, see: S/RES/986 (14 April 1995), operative paragraphs 78 (requesting the Secretary-General to establish an escrow account for the purposes of the Oil-for-Food Programme).

¹⁴ The Council has requested the Secretary-General to appoint actors to subsidiary bodies or programmes with respect to the sanctions régimes against Iraq, UNITA, the Taliban/Al Qaida, Liberia II and Liberia III. In connection with Iraq, see: S/RES/1284 (17 December 1999), operative paragraph 5 (requesting the Secretary-General to appoint the Executive-Chairman of UNMOVIC, as well as a “College of Commissioners”); S/RES/1302 (8 June 2000), operative paragraphs 7 (requesting the Secretary-General to appoint overseers to approve petroleum and petroleum product exports under the OFFP), 18 (inviting the Secretary-General to appoint independent experts to prepare a comprehensive report on the humanitarian situation in Iraq). In connection with UNITA, see: S/RES/1336 (23 January 2001), operative paragraph 5 (requesting the Secretary-General to reappoint five experts to the monitoring mechanism); S/RES/1348 (19 April 2001), operative paragraph 5 (requesting the Secretary-General to appoint five experts to the monitoring mechanism); S/RES/1374 (19 October 2001), operative paragraph 7 (requesting the Secretary-General to appoint four experts to the monitoring mechanism); S/RES/1404 (18 April 2002), operative paragraph 6 (requesting the Secretary-General to appoint four experts to the monitoring mechanism); S/RES/1439 (18 October 2002), operative paragraph 5 (requesting the Secretary-General to appoint two experts to the monitoring mechanism). In connection with the Taliban/Al Qaida, see: S/RES/1333 (19 December 2000), operative paragraph 15(a) (requesting the Secretary-General to appoint a committee of experts to make recommendations for monitoring the Afghanistan/Taliban/Al Qaida sanctions régime); S/RES/1455 (17 January 2003), operative paragraph 8 (requesting the Secretary-General to reappoint experts to the Afghanistan/Taliban/Al Qaida Monitoring Group); S/RES/1526 (30 January 2004), operative paragraph 7 (requesting the Secretary-General to appoint eight members to the Analytical Support and Sanctions Monitoring Team). In connection with Liberia II, see: S/RES/1395 (27 February 2002), operative paragraph 5 (requesting the Secretary-General to appoint experts to the Liberia Panel of Experts). The Council repeated that request in: S/RES/1458 (28 January 2003), operative paragraph 6. In connection with Liberia III, see: S/RES/1549 (17 June 2004), operative paragraph 3 (requesting the Secretary-General to appoint five experts to the regarding-established Liberia III Panel of Experts).

¹⁵ The Secretary-General was thus requested to assign the Afghanistan/Taliban/Al Qaida Monitoring Group to monitor the implementation of the sanctions for a period of twelve months. See: S/RES/1390 (16 January 2002), operative paragraph 9.

actors concerning action taken to enforce sanctions;¹⁶ coordinating the collection of information gained from the monitoring activities;¹⁷ and strengthening the collaboration between international actors involved in monitoring or enforcing sanctions.¹⁸

10.1.2 Planning

The Security Council has requested the Secretary-General to undertake various planning activities related to sanctions administration, implementation and monitoring. The Secretary-General has been requested, invited or directed to undertake planning or make recommendations for the following: improving sanctions implementation;¹⁹ monitoring sanctions implementation;²⁰ strengthening sanctions enforcement;²¹ and implementing

¹⁶ In connection with the former Yugoslavia sanctions régime, see: S/RES/787 (16 November 1992), operative paragraph 14 (requesting the Secretary-General to coordinate the submission by States and regional agencies or arrangements of reports outlining action taken to halt maritime and riparian traffic to verify that cargo was not being transported in violation of the arms embargo).

¹⁷ In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/838 (10 June 1993), operative paragraph 2 (requesting the Secretary-General to contact Member States, nationally or through regional organizations or arrangements, to ensure the availability of any relevant material derived from aerial surveillance and to report thereon to the Security Council).

¹⁸ In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraph 29 (requesting the Secretary-General to strengthen collaboration between the United Nations and regional and international organizations, including Interpol, which might be involved in monitoring or enforcing the implementation of the UNITA sanctions).

¹⁹ The Secretary-General was requested to perform such a task with respect to the sanctions régimes against Iraq and Somalia. In connection with Iraq, see: S/RES/687 (3 April 1991), operative paragraph 26 (requesting the Secretary-General to develop guidelines for the full implementation of the sanctions against arms and weapons of mass destruction and their development or servicing). In connection with Somalia, see: S/RES/814 (26 March 1993), operative paragraph 10 (requesting the Secretary-General to report on the implementation of the arms embargo from within Somalia, submitting recommendations regarding more effective measures if necessary).

²⁰ The Secretary-General was requested to play such a role with respect to the sanctions régimes against Iraq, the Federal Republic of Yugoslavia (Serbia-Montenegro) and Rwanda. In connection with the Iraq sanctions régime, see: S/RES/687 (3 April 1991), operative paragraphs 9 (deciding that the Secretary-General would develop a plan for the formation of UNSCOM), 10 (requesting the Secretary-General to develop, in cooperation with UNSCOM, a plan for the future ongoing monitoring and verification of Iraq's compliance with its obligation not to use, develop, construct or acquire weapons of mass destruction); S/RES/699, operative paragraph 4 (requesting the Secretary-General to submit recommendations for ensuring that Iraq met its obligation to cover the costs of UNSCOM's operations). In connection with the Federal

humanitarian programmes designed to minimize the humanitarian consequences of sanctions.²²

10.1.3 Monitoring and Evaluation

The Secretary-General has been requested to undertake a range of monitoring and evaluation activities in relation to the various U.N. sanctions régimes, including reporting to the Council on the following matters: the implementation of sanctions or of the resolutions

Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/787 (16 November 1992), operative paragraph 16 (requesting the Secretary-General to submit recommendations for facilitating the implementation of its resolutions by deploying observers on the borders of Bosnia and Herzegovina). The Secretary-General was subsequently requested to submit an additional report on this subject: S/RES/838 (10 June 1993), operative paragraph 1. In connection with Rwanda, see: S/RES/997 (9 June 1995), operative paragraph 6 (requesting the Secretary-General to report on consultations with the Governments of countries neighbouring Rwanda on the possibility of deploying observers to monitor the implementation of the Rwandan sanctions. The Secretary-General submitted the requested report in July 1995: S/1995/552 (9 July 1995): *Report of the Secretary-General on the implementation of paragraph 6 of Security Council resolution 997 (1995) of 9 June 1995*); S/RES/1011 (16 August 1995), operative paragraph 2 (requesting the Secretary-General to make recommendations on the establishment of a commission to investigate allegations of arms flows to former Rwandese Government Forces in the Great Lakes region).

²¹ In connection with the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1333 (19 December 2000), operative paragraph 15(c) (requesting the Secretary-General, in consultation with the 1267 Committee, to report on the implementation of the sanctions, to assess problems involved in enforcing the sanctions, to make recommendations for strengthening sanctions enforcement, and to evaluate the actions of the Taliban to come into compliance).

²² In connection with the Iraq sanctions régime and the Oil-for-Food Programme, see: S/RES/687 (3 April 1991), operative paragraph 19 (directing the Secretary-General to develop recommendations for the establishment of a compensation fund to cover Iraq's liabilities for loss, damage or injury to foreign Governments, nationals and corporations as a result of its invasion and occupation of Kuwait); S/RES/706 (15 August 1991), operative paragraph 5 (requesting the Secretary-General to submit a plan for implementing the Council's first attempt at an Oil-for-Food Programme); S/RES/1210 (4 November 1998), operative paragraph 9 (requesting the Secretary-General to compile a detailed list of the parts and equipment necessary to enable the full level of production of petroleum and petroleum products permissible under the terms of the Oil-for-Food Programme. The Council repeated that request in: S/RES/1242 (21 May 1999), operative paragraph 9; S/RES/1281 (10 December 1999), operative paragraph 9); S/RES/1281 (10 December 1999), operative paragraph 6 (requesting the Secretary-General to make recommendations for the expenditure of sums expected to be available); S/RES/1302 (8 June 2000), operative paragraphs 13 (requesting the Secretary-General to submit recommendations to the 661 Committee for minimizing the delay in paying the full amount of each purchase of Iraqi petroleum and petroleum products under the Oil-for-Food Programme), 14 (requesting the Secretary-General to submit to the 661 Committee recommendations for utilizing excess funds in an account for the inspection and auditing of the OFFP for the humanitarian components of the Programme; S/RES/1483 (22 May 2003),

providing for the application or modification of sanctions;²³ the occurrence of events which would result in the imposition of sanctions,²⁴ the occurrence of events which would result in

operative paragraph 16 (requesting the Secretary-General to undertake planning for phasing out the Oil-for-Food Programme).

²³ The Secretary-General was requested to report on the implementation of sanctions and/or the resolution in which sanctions were imposed in connection with the sanctions régimes against Southern Rhodesia, South Africa, Iraq, Somalia, Haiti, Rwanda, the Sudan, Sierra Leone, the Federal Republic of Yugoslavia and the Taliban/Al Qaida. In connection with Southern Rhodesia, see: S/RES/232 (16 December 1966), operative paragraph 9; S/RES/253 (29 May 1968), operative paragraph 19; S/RES/277 (18 March 1970), operative paragraph 20. In connection with South Africa, see: S/RES/418 (4 November 1977), operative paragraph 6; S/RES/473 (13 June 1980), operative paragraph 12; S/RES/558 (13 December 1984), operative paragraph 4 [in this case requesting the Secretary-General to report to the South Africa Sanctions Committee, rather than directly to the Council, on the implementation of resolution 558 (1984)]; S/RES/569 (26 July 1985), operative paragraph 8; S/RES/591 (28 November 1986), operative paragraph 14. In connection with Iraq, see: S/RES/661 (6 August 1990), operative paragraph 10 (requesting the Secretary-General to report to it within thirty days on the implementation of resolution 661 (1990)); S/RES/1284 (17 December 1999), operative paragraph 32 (requesting the Secretary-General to report on the implementation of operative paragraphs 15 to 30 of resolution 1284 (1999), by which the Council established UNMOVIC and modified the OFFP). In connection with Somalia, see: S/RES/733 (23 January 1992), operative paragraph 10; S/RES/1425 (22 July 2002), operative paragraph 14 (requesting the Secretary-General to report on the measures taken by States to ensure the effective implementation of sanctions). In connection with Haiti, see: S/RES/940 (31 July 1994), operative paragraph 14 (requesting the Secretary-General to report on the implementation of the resolution by which the Council authorized the establishment of the multinational force to strengthen the implementation of the sanctions); S/RES/917 (6 May 1994), operative paragraph 16 (requesting the Secretary-General to report on the situation in Haiti, including on the effectiveness of the implementation of sanctions). In connection with Rwanda, see: S/RES/1053 (23 April 1996), operative paragraph 12 (requesting the Secretary-General to report on the implementation of resolution 1053 (1996)). In connection with the Sudan, see: S/RES/1054 (26 April 1996), operative paragraph 7 (requesting the Secretary-General to report on information received from States on steps taken to implement the sanctions). In connection with Sierra Leone, see: S/RES/1132 (8 October 1997), operative paragraph 13 (requesting the Secretary-General to report on measures taken by States to implement the sanctions). In connection with the Federal Republic of Yugoslavia, see: S/RES/1160 (31 March 1998), operative paragraph 14. In connection with the Taliban/Al Qaida, see: S/RES/1333 (19 December 2000), operative paragraph 15(c).

²⁴ In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/820 (17 April 1993), operative paragraphs 10 (requesting the Secretary-General to report to the Council if within nine days of the adoption of resolution 820 (1993) the Bosnian Serbs had signed and begun to implement the peace plan, in which case the additional sanctions would not be imposed), 11 (in the event that the Bosnian Serbs did sign and begin to implement the peace process, thus meaning that the sanctions were not in fact imposed, requesting the Secretary-General to report if the Bosnian Serbs subsequently renewed military attacks or failed to comply with the peace plan, in which case the sanctions would immediately be reimposed).

In connection with the sanctions régime against the Bosnian Serbs, see: S/RES/820 (17 April 1993), operative paragraphs 10 (requesting the Secretary-General to report if within nine days of the adoption of resolution 820 (1993) the Bosnian Serbs had signed and begun to implement the peace plan, in which case the sanctions would not be imposed); 11 (in the event that the Bosnian Serbs did sign and begin to implement the peace process, requesting the Secretary-

the suspension of sanctions,²⁵ the occurrence of events which would result in the reimposition of sanctions,²⁶ the occurrence of events which would result in the strengthening

General to report if the Bosnian Serbs subsequently renewed military attacks or failed to comply with the peace plan, in which case the sanctions would immediately come into effect).

In connection with the Haiti sanctions régime, see: S/RES/841 (16 June 1993), operative paragraphs 3 (requesting the Secretary-General to report if, having regard to the views of the OAS Secretary-General, the imposition of sanctions was not warranted), 4 (requesting the Secretary-General to report if at any time he determined, having regard to the views of the OAS Secretary-General, that the *de facto* authorities in Haiti had failed to comply in good faith with their commitments, in which case the sanctions would come into force immediately).

In connection with the UNITA sanctions régime, see: S/RES/864 (15 September 1993), operative paragraphs 17 (requesting the Secretary-General to report if, before the date on which the sanctions were to come into force, an effective cease-fire had been established and agreement had been reached on the implementation of the Acordos de Paz and relevant Security Council resolutions, in which case the sanctions would not come into force), 18 (in the event that the sanctions were not to come into force due to the establishment of a cease-fire and the achievement of an agreement upon the implementation of the Acordos de Paz and relevant Security Council resolutions, requesting the Secretary-General to report if UNITA subsequently broke the cease-fire or ceased participating constructively in the establishment of a cease-fire and the achievement of an agreement upon the implementation of the Acordos de Paz and relevant Security Council resolutions, in which case the sanctions would come into force immediately); S/RES/1075 (11 October 1996), operative paragraph 13 (requesting the Secretary-General to report if UNITA had made substantial and genuine progress in fulfilling its obligations under the peace process by a certain date, in which case additional sanctions would not be imposed); S/RES/1127 (28 August 1997), operative paragraph 7 (requesting the Secretary-General to report if, before the date on which additional sanctions were to come into force, UNITA had taken concrete and irreversible steps to implement its obligations under the Lusaka Protocol, in which case the sanctions would not come into effect. The Secretary-General did subsequently report that UNITA had taken certain steps to implement its obligations, thus prompting the Council to postpone the date on which the additional sanctions would come into force by a further month and to affirm its willingness to review further the application of the additional sanctions: S/RES/1130 (29 September 1997), operative paragraphs 2, 3); S/RES/1173 (12 June 1998), operative paragraph 14 (requesting the Secretary-General to report if, two days before the date on which the additional sanctions were to come into force, UNITA had complied with its demand to cooperate without conditions in the extension of State administration throughout Angola, in which case the sanctions would not come into effect).

In connection with the Sudan sanctions régime, see: S/RES/1070 (16 August 1996), operative paragraph 4 (requesting the Secretary-General to report if Sudan had complied with the objectives of the sanctions régime prior to the date on which the additional sanctions were to come into effect, in which case the sanctions might not enter into force).

In connection with the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1267 (15 October 1999), operative paragraph 3 (requesting the Secretary-General to report if the Taliban had complied with its obligations under the sanctions régime before 14 November 1999, in which case the Council might decide that the sanctions would not come into operation).

²⁵

In connection with the Libya sanctions régime, see: S/RES/883 (11 November 1993), operative paragraph 16 (requesting the Secretary-General to report in the event that Libya had ensured the appearance of those charged with the bombing of Pan Am flight 103 before the appropriate United Kingdom or United States court and had satisfied that French judicial authorities with respect to the bombing of UTA flight 772, in which case the sanctions would be suspended); S/RES/1192 (27 August 1998), operative paragraph 8 (requesting the Secretary-General to

of sanctions²⁷ or the occurrence of events which would result in the termination of sanctions.²⁸ The Secretary-General has also been requested to report to the Council on:

report in the event that the Lockerbie suspects had arrived in the Netherlands for trial before a Scottish court, in which case the sanctions would be suspended).

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/820 (17 April 1993), operative paragraph 31 (requesting the Secretary-General to report to the Council if the Bosnian Serbs had signed the peace plan and were implementing their obligations in good faith, in which case the Council would review the sanctions with a view to lifting them gradually).

In connection with the sanctions régime against the Bosnian Serbs, see: S/RES/820 (17 April 1993), operative paragraph 31 (requesting the Secretary-General to report if the Bosnian Serbs had signed the peace plan and was implementing its obligations in good faith, in which case the Council would review the sanctions with a view to lifting them gradually).

²⁶ In connection with the Libya sanctions régime, see: S/RES/883 (11 November 1993), operative paragraph 16 (requesting the Secretary-General, in the event that sanctions were suspended, to report on Libya's ongoing compliance with the remaining objectives of the sanctions régime).

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/943 (23 September 1994), operative paragraph 3 (requesting the Secretary-General to report every thirty days on whether the Co-Chairmen of the Steering Committee of the ICFY had certified that the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) were effectively implementing their decision to close the border between the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Bosnia and Herzegovina to goods and products prohibited under the sanctions régime and to report immediately if there was evidence that those authorities were not effectively implementing their decision to close the border). The Council repeated that request in: S/RES/970 (12 January 1995), operative paragraph 5; S/RES/988 (21 April 1995), operative paragraph 13; S/RES/1003 (5 July 1995), operative paragraph 2; S/RES/1015 (15 September 1995), operative paragraph 2. Also in connection to the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/1022 (22 November 1995), operative paragraphs 1 (requesting the Secretary-General to report if the Federal Republic of Yugoslavia had failed to sign the Peace Agreement, in which case the suspension of the sanctions would lapse after five days), 3 (requesting the Secretary-General to report if the Federal Republic of Yugoslavia was failing to meet its obligations under the Peace Agreement, in which case the suspension of the sanctions would lapse after five days).

In connection with the Haiti sanctions régime, see: S/RES/861 (27 August 1993), operative paragraph 2 (requesting the Secretary-General to report if, having regard to the views of the OAS Secretary-General, he concluded that the parties to the Governor's Island Agreement or any other authorities in Haiti had not complied in good faith with that Agreement, in which case the sanctions would be re-imposed immediately); S/26460: *Presidential statement of 17 September 1993* (requesting the Secretary-General to report if he determined, having received the views of the OAS Secretary-General, that there had been a serious and consistent non-compliance with the Governor's Island Agreement, in which case the sanctions would be reinstated immediately); S/26567: *Presidential statement of 11 October 1993* (requesting the Secretary-General to report urgently on whether the incident in which organized armed civilian groups had threatened journalists and diplomats waiting to meet a contingent of UNMIH constituted non-compliance by the armed forces of Haiti with the Governor's Island Agreement, thus warranting the reimposition of sanctions).

²⁷ In connection with the UNITA sanctions régime, see: S/RES/903 (16 March 1994), operative paragraph 10; S/RES/922 (31 May 1994), operative paragraph 7 (expressing readiness to strengthen the sanctions against UNITA in the light, *inter alia*, of a recommendation by the

the humanitarian situation in a target State;²⁹ the work of sanctions-related subsidiary bodies,³⁰ the implementation of humanitarian programmes designed to minimize the

Secretary-General either to impose additional sanctions or to review those in effect). In subsequent decisions the Council again expressed its readiness to consider further measures, in the light of recommendations by the Secretary-General. See: S/RES/1055 (8 May 1996), operative paragraph 28; S/RES/1064 (11 July 1996), operative paragraph 28.

²⁸ In connection with the former Yugoslavia sanctions régime, see: S/RES/1021 (22 November 1995), operative paragraphs 1 (noting that the process of terminating the sanctions would begin once the Secretary-General had reported that a Peace Agreement had been signed formally by Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia), 2 (requesting the Secretary-General to prepare such a report in the appropriate circumstances).

In connection with the Haiti sanctions régime, see: S/RES/841 (16 June 1993), operative paragraph 16 (expressing willingness to review the sanctions with a view to lifting them if the Secretary-General were to report, having regard to the views of the OAS Secretary-General, he determined that the *de facto* authorities in Haiti had signed and begun implementing in good faith an agreement to reinstate the legitimate Government of President Jean-Bertrand Aristide); S/RES/861 (27 August 1993), operative paragraph 3 (expressing willingness to review the sanctions with a view to lifting them if the Secretary-General were to report, having regard to the views of the OAS Secretary-General, he were to conclude that the relevant provisions of the Governor's Island Agreement had been fully implemented).

In connection with the UNITA sanctions régime, see: S/RES/1173 (12 June 1998), operative paragraph 15 (requesting the Secretary-General to report if UNITA had complied with all its relevant obligations, in which case the additional sanctions would be reviewed and terminated).

In connection with the sanctions régime against the Federal Republic of Yugoslavia to address the situation in Kosovo, see: S/RES/1160 (31 March 1998), operative paragraph 16 (requesting the Secretary-General to report in the event that the Federal Republic of Yugoslavia had complied with the objectives of the sanctions régime, in which event the Council would take action to terminate them).

In connection with the Ethiopia and Eritrea sanctions régime, see: S/RES/1298 (17 May 2000), operative paragraph 17 (requesting the Secretary-General to report in the event that there were a peaceful, definitive settlement of the conflict, in which case the sanctions would be terminated).

²⁹ In connection with the Iraq sanctions régime, see: S/RES/666 (13 September 1990), operative paragraphs 3-5 (requesting the Secretary-General to seek information on the availability of food in Iraq and Kuwait and to report such information to the 661 Committee).

In connection with the Haiti sanctions régime, see: S/RES/917 (6 May 1994), operative paragraph 16 (requesting the Secretary-General to report on the situation in Haiti, including on humanitarian situation).

In connection with the Ethiopia and Eritrea sanctions régime, see: S/RES/1298 (17 May 2000), operative paragraph 15 (requesting the Secretary-General to report on the humanitarian situation in Ethiopia and Eritrea).

³⁰ In connection with the Iraq sanctions régime, see: S/RES/699, operative paragraph 3 (requesting the Secretary-General to report on the work of UNSCOM).

In connection with the Rwanda sanctions régime, see: S/RES/1013 (7 September 1995), operative paragraph 4 (requesting the Secretary-General to report on the establishment of the International Commission of Inquiry and to submit the interim and final reports of the Commission. The interim report was to be submitted three months after the establishment of the Commission and the final report was to be submitted as soon as possible thereafter).

consequences of sanctions;³¹ monitoring activities related to sanctions implementation;³² good offices efforts to facilitate the achievement of the objectives of a sanctions régime;³³ the

³¹ The Secretary-General was requested to undertake an extensive collection of responsibilities in relation to the implementation of the Oil-for-Food Programme. The main monitoring task was to report regularly on the general implementation of the Programme. See: S/RES/986 (14 April 1995), operative paragraph 11; S/RES/1111 (4 June 1997), operative paragraph 3; S/RES/1143 (4 December 1997), operative paragraph 4; S/RES/1153 (20 February 1998), operative paragraph 10; S/RES/1210 (4 November 1998), operative paragraph 6; S/RES/1242 (21 May 1999), operative paragraph 6; S/RES/1281 (10 December 1999), operative paragraph 5; S/RES/1302 (8 June 2000), operative paragraph 5; S/RES/1330 (5 December 2000), operative paragraph 5; S/RES/1360 (3 July 2001), operative paragraph 5 (requesting on that occasion that the Secretary-General report within 90 and 150 days on the implementation of the OFFP); S/RES/1409 (14 May 2002), operative paragraph 7 (requesting on that occasion that the Secretary-General report on the implementation of the OFFP within 180 days).

For the Secretary-General's other monitoring and evaluation tasks in connection with the implementation of the Oil-for-Food Programme, see: S/RES/1153 (20 February 1998), operative paragraph 5 (requesting the Secretary-General to report on the implementation of the distribution plan for the Oil-for-Food Programme. That request was reiterated in: S/RES/1210 (4 November 1998), operative paragraph 7; and S/RES/1242 (21 May 1999), operative paragraph 7); S/RES/1153 (20 February 1998), operative paragraph 11 (requesting the Secretary-General to report on improving the electricity sector in Iraq and on essential humanitarian needs in Iraq); S/RES/1175 (19 June 1998), operative paragraph 6 (requesting the Secretary-General to provide for the monitoring of parts and equipment imported to Iraq for the purposes of increasing the oil production necessary for the OFFP); S/RES/1281 (10 December 1999), operative paragraph 6 (requesting the Secretary-General to report if Iraq were unable to export the full allotment of petroleum and petroleum products permissible under the OFFP); S/RES/1284 (17 December 1999), operative paragraph 28 (requesting the Secretary-General to report on progress made in meeting the humanitarian needs of the Iraqi people and on the revenues necessary to meet those needs); S/RES/1330 (5 December 2000), operative paragraph 18 (requesting the Secretary-General to report with proposals for the use of additional export routes for petroleum and petroleum products for the OFFP); S/RES/1360 (3 July 2001), operative paragraph 11 (requesting the Secretary-General to report on the extent to which the Iraqi Government was ensuring equitable distribution of humanitarian supplies provided under the Oil-for-Food Programme. That request was repeated in: S/RES/1447 (4 December 2002), operative paragraph 4); S/RES/1409 (14 May 2002), operative paragraph 8 (requesting the Secretary-General to report on the implementation of the Goods Review List, including recommendations for the List and the procedures for its implementation. That request was reiterated in: S/RES/1447 (4 December 2002), operative paragraph 5); S/RES/1472 (28 March 2003), operative paragraph 9 (requesting the Secretary-General to update the 661 Committee on steps taken to implement the temporary measures authorized to use contracts previously approved under the OFFP to provide for the humanitarian needs of the Iraqi people); S/RES/1472 (28 March 2003), operative paragraph 11 (requesting the Secretary-General to report to the Council on the implementation of those temporary measures).

³² In connection with the Iraq sanctions régime, see: S/RES/1051 (27 March 1996), operative paragraph 16 (requesting the Secretary-General to submit, in cooperation with the Director-General of the IAEA, six-monthly progress reports on the monitoring of the sanctions against arms and weapons of mass destruction).

In connection with the sanctions régime against Somalia, see: S/RES/1425 (22 July 2002), operative paragraph 14 (requesting the Secretary-General to report on the technical assistance and cooperation provided in order to enhance administrative and judicial capacities throughout Somalia to monitor and give effect to the embargo).

extent to which a target had complied with the objectives of a sanctions régime;³⁴ legitimate trade conducted in accordance with approved exemptions from a sanctions régime;³⁵ the humanitarian implications of sanctions;³⁶ and strengthening sanctions enforcement.³⁷

³³ In connection with the Haiti sanctions régime, see: S/RES/841 (16 June 1993), operative paragraph 15 (requesting the Secretary-General to report on progress achieved in the efforts jointly undertaken by him and the OAS Secretary-General with a view to reaching a political solution to the crisis in Haiti).

In connection with the Sudan sanctions régime, the Council made a good offices request of the Secretary-General prior to the imposition of sanctions. The sanctions were applied soon thereafter. See: S/RES/1044 (31 January 1996), operative paragraph 7 (requesting the Secretary-General to report on the results of his efforts to seek the cooperation of the Government of Sudan with the Council's requests to extradite the three suspects alleged to have been involved in the assassination attempt against President Mubarak and to refrain from supporting terrorist activities).

³⁴ In connection with the UNITA sanctions régime, see: S/RES/1127 (28 August 1997), operative paragraph 8 (requesting the Secretary-General to report at regular intervals on UNITA's compliance with its obligation to implement the Lusaka Protocol).

In connection with the Sudan sanctions régime, see: S/RES/1054 (26 April 1996), operative paragraph 8 (requesting the Secretary-General to report on whether the Government of Sudan had complied with the Council's demands to extradite the three suspects and to desist from assisting, supporting and facilitating terrorist activities and from giving shelter to terrorist elements). The Council repeated that request in: S/RES/1070 (16 August 1996), operative paragraph 5.

In connection with the Sierra Leone sanctions régime, see: S/RES/1132 (8 October 1997), operative paragraph 16 (requesting the Secretary-General to report on the compliance of the military junta with the requirements of the sanctions régime); S/RES/1171 (5 June 1998), operative paragraph 8 (requesting the Secretary-General to report on progress towards the re-establishment of Government control throughout Sierra Leone and the disarmament and demobilization of all non-government forces).

In connection with the Ethiopia and Eritrea sanctions régime, see: S/RES/1298 (17 May 2000), operative paragraph 15 (requesting the Secretary-General to report on the steps taken by Ethiopia and Eritrea to comply with the objectives of the sanctions régime).

³⁵ In connection with the Rwanda sanctions régime, see: S/RES/1011 (16 August 1995), operative paragraph 12 (requesting the Secretary-General to report on the legitimate export of arms to Rwanda in accordance with approved exemptions. The following reports were thus submitted by the Secretary-General: S/1996/202 (15 March 1996); S/1996/663/Rev.1 & Add.1 (15 and 30 August 1996)).

In connection with the Sierra Leone sanctions régime, see: S/RES/1171 (5 June 1998), operative paragraph 8 (requesting the Secretary-General to report on exports of arms and related *matériel* to Sierra Leone).

³⁶ In connection with the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1333 (19 December 2000), operative paragraph 15(d) (requesting the Secretary-General to report on the humanitarian implications of the sanctions). The Secretary-General submitted four reports to the Council in 2001 on the humanitarian implications of the sanctions: S/2001/241 (20 March 2001): *Report of the Secretary-General on the humanitarian implications of the measures imposed by Security Council resolutions 1267 (1999) and 1333 (2000) on Afghanistan*; S/2001/695 (13 July 2001): *Report of the Secretary-General on humanitarian implications of the measures imposed by Security Council resolutions 1267 (1999) and 1333 (2000) on Afghanistan*; S/2001/1086 (19 November 2001): *Report of the Secretary-General on the*

10.1.4 Implementation

Among the Secretary-General's responsibilities for taking action to improve the implementation of sanctions and sanctions-related programmes, he has been requested, invited or directed to undertake the following tasks: to use his good offices to facilitate the delivery of humanitarian supplies to a State target,³⁸ to use his good offices to seek the compliance of a target with the objectives of a sanctions régime;³⁹ to take various actions connected with the implementation of humanitarian programmes designed to minimize the

humanitarian implications of the measures imposed by Security Council resolutions 1267 (1999) and 1333 (2000) on Afghanistan; S/2001/1215 (18 December 2001): Report of the Secretary-General on the humanitarian implications of the measures imposed by Security Council resolutions 1267 (1999) and 1333 (2000) on Afghanistan. It should be noted that the report of November 2001 (S/2001/1086) consisted of a short statement that it had not been possible to undertake the task of reporting on humanitarian implications due to the "precarious security situation in Afghanistan". In his December report the Secretary-General also noted that due to developments in Afghanistan he was not in a position to report on the humanitarian implications of the sanctions. He did, however, outline some observations relating to the experience of monitoring the humanitarian implications of sanctions.

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 13(a) (requesting the Secretary-General to report with a preliminary assessment of the potential economic, humanitarian and social impact on the Liberian population of possible follow-up action by the Council in relation to the recommendations to be made by the Liberia Panel of Experts); S/RES/1478 (6 May 2003), operative paragraph 19 (requesting the Secretary-General to report on the possible humanitarian or socio-economic impact of the logging sanctions).

³⁷ In connection with the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1333 (19 December 2000), operative paragraph 15(c) (requesting the Secretary-General to report on the implementation of sanctions, assessing problems in sanctions enforcement, making recommendations for strengthening sanctions enforcement, and evaluating the actions taken by the Taliban to comply with the aims of the sanctions).

³⁸ In connection with the Iraq sanctions régime, see: S/RES/666 (13 September 1990), operative paragraph 7 (requesting the Secretary-General to use his good offices to facilitate the delivery and distribution of foodstuffs to Iraq and Kuwait).

³⁹ In connection with the Libya sanctions régime, see: S/RES/748 (31 March 1992), operative paragraph 12 (inviting the Secretary-General to continue his role of seeking the cooperation of the Libyan Government). The Council had requested that the Secretary-General play such a role two months earlier, when it had first urged Libya to cooperate with investigations into the bombings of Pan Am flight 103 and UTA flight 772: S/RES/731 (21 January 1992), operative paragraph 4. It subsequently repeated its invitation to the Secretary-General in S/RES/883 (11 November 1993), operative paragraph 14. In connection with the Sudan sanctions régime, the Secretary-General was requested prior to the application of sanctions to seek, in consultation with the Organization of African Unity, the cooperation of the Government of Sudan with the requests to extradite the three suspects alleged to have been involved in the assassination attempt against President Mubarak and to refrain from supporting terrorist activities. See: S/RES/1044 (31 January 1996), operative paragraph 7.

humanitarian consequences of sanctions;⁴⁰ to take action to support the implementation of sanctions from within a target;⁴¹ to take action with the aim of improving the implementation

⁴⁰ For requests related to the general implementation of the Oil-for-Food Programme, see: S/RES/712 (19 September 1991), operative paragraph 10 (requesting the Secretary-General to implement the first attempt at an Oil-for-Food Programme); S/RES/986 (14 April 1995), operative paragraph 13 (requesting the Secretary-General to take the necessary actions to ensure the implementation of the OFFP, authorizing him to enter into the necessary arrangements or agreements, and requesting him to report on steps taken in that respect). Those requests were repeated in: S/RES/1153 (20 February 1998), operative paragraph 4; S/RES/1210 (4 November 1998), operative paragraph 4; S/RES/1242 (21 May 1999), operative paragraph 3; S/RES/1281 (10 December 1999), operative paragraph 3; S/RES/1330 (5 December 2000), operative paragraph 3; S/RES/1360 (3 July 2001), operative paragraph 3.

For requests related to more specific responsibilities connected with the implementation of the Oil-for-Food Programme, see: S/RES/1284 (17 December 1999), operative paragraphs 21 (requesting the Secretary-General to maximize the effectiveness of the OFFP), 22 (requesting the Secretary-General to minimize the cost of U.N. activities associated with the implementation of the OFFP), 24 (requesting the Secretary-General to make the necessary arrangements to allow the purchase of Iraqi-produced goods under the Oil-for-Food Programme. That request was repeated in: S/RES/1330 (5 December 2000), operative paragraph 15), 26 (requesting the Secretary-General to make the necessary arrangements to provide for reasonable expenses related to the Hajj to be met by funds in the escrow account); S/RES/1330 (5 December 2000), operative paragraphs 9 (requesting the Secretary-General to redirect excess funds in an account for the inspection and auditing of the OFFP so that they could be used for humanitarian purchases. That request was repeated in S/RES/1360 (3 July 2001), operative paragraph 8), 11 (requesting the Secretary-General to expand the lists of humanitarian items for which simple notification to the 661 Committee, rather than the Committee's approval, was required prior to being exported to Iraq under the OFFP); S/RES/1360 (3 July 2001), operative paragraph 9 (requesting the Secretary-General to redirect a percentage of the funds from the account for the Compensation Fund to the account for humanitarian projects and requesting the Secretary-General to report on the use of those funds); S/RES/1454 (30 December 2002), operative paragraph 3 (directing the Secretary-General to develop within 60 days consumption rates and levels for medicines and medicinal chemicals under paragraph 20 of the procedures for the implementation of the Goods Review List); S/RES/1472 (28 March 2003), operative paragraph 4 (requesting the Secretary-General to undertake, after the outbreak of the second Gulf War, temporary measures to provide for the implementation of contracts that had been approved under the OFFP prior to the outbreak of that war. Those measures included: (a) establishing alternative locations for the delivery of humanitarian supplies; (b) reviewing approved contracts to determine priority humanitarian contracts to be fulfilled in the authorized period; (c) contacting suppliers to determine action to be taken in accordance with those priorities; (d) negotiating necessary adjustments to contracts; (e) negotiating new contracts for essential medical items; (f) transferring, on an exceptional and reimbursable basis as necessary to ensure the delivery of essential humanitarian supplies to the Iraqi people, unencumbered funds between the accounts created under the OFFP for humanitarian assistance to Iraq in general, and for complementary humanitarian assistance to three northern Iraqi governorates; (g) using funds in those accounts, as necessary and appropriate, to compensate suppliers and shippers for extra costs incurred as a result of diverting and delaying shipments; (h) meeting additional operational and administrative costs by using the fund created under the OFFP for the payment of independent inspection activities; and (i) using where possible locally produced goods and services); S/RES/1483 (22 May 2003), operative paragraph 16 (requesting the Secretary-General to terminate the OFFP over a period of six months).

⁴¹ In connection with the Somalia sanctions régime, see: S/RES/814 (26 March 1993), operative paragraph 10 (requesting the Secretary-General to support from within Somalia the

of sanctions by States in general;⁴² to take action to improve sanctions monitoring within a target;⁴³ to take action to improve sanctions monitoring in States neighbouring a target;⁴⁴ and to organize the provision of financial, technical and material assistance to States seeking special economic assistance to offset difficulties experienced as a result of implementing sanctions.⁴⁵

10.2 States

In addition to the actions that States are required to take to implement sanctions, in accordance with their obligations under the United Nations Charter, States have also been called upon by the Security Council to take various actions to strengthen the implementation,

implementation of the arms embargo, utilizing as available and appropriate the forces of UNOSOM II).

⁴² In connection with the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1333 (19 December 2000), operative paragraph 15(b) (requesting the Secretary-General to consult with relevant Member States to put into effect the Afghanistan/Taliban/Al Qaida sanctions).

⁴³ In connection with the Somalia sanctions régime, see: S/RES/1407 (3 May 2002), operative paragraph 7 (requesting the Secretary-General to work with various parties in Somalia to enhance the administrative and judicial capacities throughout Somalia to contribute to the monitoring and enforcement of the embargo).

⁴⁴ In connection with the Rwanda sanctions régime, see: S/RES/997 (9 June 1995), operative paragraph 6 (requesting the Secretary-General to consult with Governments of countries neighbouring Rwanda with respect to the possibility of deploying observers to monitor the implementation of the Rwandan sanctions); S/RES/1011 (16 August 1995), operative paragraph 4 (encouraging the Secretary-General to continue consultations with Governments of neighbouring States concerning the deployment of United Nations military observers at airfields and transportation points in and around border crossings); S/RES/1053 (23 April 1996), operative paragraph 7 (requesting the Secretary-General to consult with States neighbouring Rwanda, and in particular Zaire, on appropriate measures for better implementing the arms embargo and deterring shipments of arms to former Rwandan government forces, including through the deployment of United Nations observers).

⁴⁵ In connection with the Southern Rhodesia sanctions régime, see: S/RES/386 (17 March 1976), operative paragraph 6 (requesting “the Secretary-General, in collaboration with the appropriate organizations of the United Nations system, to organize, with immediate effect, all forms of financial, technical and material assistance to Mozambique to enable it to overcome the economic difficulties arising from its application of economic sanctions against the racist régime in Southern Rhodesia”). In the same resolution the Council also requested States and the United Nations in general to provide assistance to Mozambique. See: *ibid*, operative paragraphs 4, 5.

monitoring and enforcement of sanctions.⁴⁶ The Council has requested States to take such additional action in relation to almost every sanctions régime established to date. Additional action has been requested of States in general, and of particular groups of States, including: States Members of the United Nations, States non-members of the United Nations, and various other groupings of States, including States neighbouring or located in the region, of a sanctions target.

10.2.1 States in general

In its oversight of U.N. sanctions régimes, the Council has called upon, requested, invited, or required States in general to undertake a range of activities related to the implementation, monitoring and enforcement of sanctions. The Council has thus called upon or requested States: to implement sanctions fully;⁴⁷ to take effective measures domestically

⁴⁶ Analysis here does not consider additional action requested by the Council that does not constitute action to strengthen the implementation, monitoring or enforcement of sanctions. Thus, for example, calls for States to impose additional voluntary sanctions [see, e.g., in connection with the sanctions régime against Southern Rhodesia: S/RES/232 (16 December 1966), operative paragraph 5 (calling upon all States “not to render financial or other economic aid to the illegal racist régime in Southern Rhodesia”)] are not included in this section, as those actions did not have as their aim strengthening the implementation, monitoring and enforcement of the existing mandatory sanctions.

⁴⁷ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/314 (28 February 1972), operative paragraph 2 (urging all States to implement fully the sanctions, in accordance with their obligations under Article 25 and Article 2(6) the Charter); S/RES/320 (29 September 1972), operative paragraph 2 (calling upon all States to implement fully the sanctions, in accordance with Article 25 and Article 2(6) of the Charter).

In connection with the South Africa sanctions régime, see: S/RES/418 (4 November 1977), operative paragraph 5 (calling upon all States, including States non-members of the United Nations, to act strictly in accordance with the sanctions); S/RES/591 (28 November 1986), operative paragraph 5 (requesting all States to implement strictly the sanctions and to refrain from any cooperation in the nuclear field with South Africa).

In connection with the Iraq sanctions régime, see: S/RES/670 (25 September 1990), operative paragraphs 1 (calling upon States to carry out their obligations to ensure strict and complete compliance with the sanctions), 7 (calling upon States to cooperate in taking such measures as necessary, consistent with international law, to ensure the effective implementation of the sanctions).

In connection with the Somalia sanctions régime, see, the following decisions reaffirming or stressing the obligation of States to implement the embargo: S/RES/814 (26 March 1993), operative paragraph 11; S/RES/886 (18 November 1993), operative paragraph 11; S/RES/897 (4

to prevent the violation of sanctions by their nationals or in their territories;⁴⁸ and to take international action in order to prevent the violation of sanctions.⁴⁹ The Council has also

February 1994), operative paragraph 9; S/RES/923 (31 May 1994), operative paragraph 6; S/PRST/1995/15 (6 April 1995): *Presidential Statement of 6 April 1995*; S/PRST/1996/4 (24 January 1996): *Presidential Statement of 24 January 1996*; S/PRST/1997/8 (27 February 1997): *Presidential Statement of 27 February 1997*; S/PRST/1997/57 (23 December 1997): *Presidential Statement of 23 December 1997*; S/PRST/1999/16 (27 May 1999): *Presidential Statement of 27 May 1999*; S/PRST/2000/22 (29 June 2000): *Presidential Statement of 29 June 2000*; S/PRST/2001/1 (11 January 2001): *Presidential Statement of 11 January 2001*; S/RES/1356 (19 June 2001), operative paragraph 1; S/RES/1474 (8 April 2003), operative paragraph 1. Also in connection with the Somalia sanctions régime, see: S/PRST/1999/31 (12 November 1999): *Presidential Statement of 12 November 1999* (strongly calling upon all States to observe and improve the effectiveness of the embargo).

In connection with the sanctions régime against Liberia (in the first instance), see: S/RES/813 (26 March 1993), operative paragraph 9 (calling upon States to comply with and implement the arms embargo). The Council reaffirmed this call in: S/RES/950 (21 October 1994), operative paragraph 6; S/RES/972 (13 January 1995), operative paragraph 6; S/RES/985 (13 April 1995), operative paragraph 4 (urging all States, and in particular neighbouring States, to comply fully with the embargo); S/RES/1001 (30 June 1995), operative paragraph 10; S/RES/1014 (15 September 1995), operative paragraph 11; S/RES/1020 (10 November 1995), operative paragraph 11; S/RES/1041 (29 January 1996), operative paragraph 14; S/PRST/1996/16: *Presidential statement of 9 April 1996*; S/PRST/1996/22: *Presidential statement of 6 May 1996*; S/RES/1059 (31 May 1996), operative paragraph 11; S/RES/1071 (30 August 1996), operative paragraph 12; S/RES/1083 (27 November 1996), operative paragraph 10; S/RES/1100 (27 March 1997), operative paragraph 9; S/RES/1116 (27 June 1997), operative paragraph 7.

In connection with the UNITA sanctions régime, see: S/RES/890 (15 December 1993), operative paragraph 13 (reaffirming the obligation of all States to implement fully the sanctions). The Council repeated that reaffirmation or called upon States to implement the sanctions strictly in: S/RES/903 (16 March 1994), operative paragraph 9; S/RES/922 (31 May 1994), operative paragraph 8; S/RES/932 (30 June 1994), operative paragraph 8; S/RES/945 (29 September 1994), operative paragraph 13; S/RES/952 (27 October 1994), preambular paragraph 9; S/RES/966 (8 December 1994), preambular paragraph 10; S/RES/976 (8 February 1995), operative paragraph 12; S/PRST/1995/11 (10 March 1995): *Presidential statement of 10 March 1995*; S/PRST/1995/18 (13 April 1995): *Presidential statement of 13 April 1995*; S/RES/1045 (8 February 1996), operative paragraph 19; S/PRST/1996/19 (24 April 1996): *Presidential statement of 24 April 1996*; S/RES/1055 (8 May 1996), operative paragraph 19; ; S/RES/1064 (11 July 1996), operative paragraph 18; S/RES/1075 (11 October 1996), operative paragraph 17; S/RES/1087 (11 December 1996), operative paragraph 15; S/RES/1173 (12 June 1998), operative paragraph 18; S/RES/1195 (15 September 1998), operative paragraph 5; S/RES/1202 (15 October 1998), operative paragraph 13.

In connection with the Sierra Leone sanctions régime, see: S/PRST/1997/52 (14 November 1997): *Presidential statement of 14 November 1997* (reminding States of their obligation to comply strictly with the sanctions). The Council reaffirmed that obligation in: S/RES/1181 (13 July 1998), operative paragraph 13; S/PRST/1999/1 (7 January 1999): *Presidential statement of 7 January 1999*; S/RES/1231 (11 March 1999), operative paragraph 7; S/PRST/1999/13 (15 May 1999): *Presidential statement of 15 May 1999*.

In connection with the Kosovo sanctions régime, see: S/RES/1199 (23 September 1998), operative paragraph 7 (recalling the obligations of all States to implement fully the sanctions).

⁴⁸

For the Southern Rhodesia sanctions régime, see: S/RES/314 (28 February 1972), operative paragraph 5 (calling upon all States to take more effective measures to ensure full implementation of the sanctions); S/RES/318 (28 July 1972), operative paragraph 9 (urging all

States to review the adequacy of legislation and practices followed so far in relation to matters relating to the sanctions and to take more effective measures to ensure their full implementation); S/RES/328 (10 March 1973), operative paragraph 7 (requesting all Governments to take stringent measures to enforce and ensure full compliance by all individuals and organizations under their jurisdiction with the sanctions); S/RES/333 (22 May 1973), operative paragraphs 3 (requesting States to repeal immediately any legislation permitting importation of minerals and other products from Southern Rhodesia), 4 (calling upon States to enact and enforce legislation providing for the imposition of severe penalties on persons natural or juridical that evaded or breached sanctions).

For the South Africa sanctions régime, see: S/RES/591 (28 November 1986), operative paragraphs 2 (calling upon States to prohibit the export of spare parts for embargoed aircraft and other military equipment belonging to South Africa and any official involvement in the maintenance and service of such equipment), 3, (urging all States to prohibit the export to South Africa of items destined for the military or police forces in South Africa, or which had a military capacity and were intended for military purposes, such as aircraft and parts thereof, electronic and telecommunication equipment, computers and 4-wheel drive vehicles) and 10 (requesting all States to ensure that their national legislation and policy directives contained penalties to deter violations of the sanctions).

For the Iraq sanctions régime, see: S/RES/687 (3 April 1991), operative paragraph 27 (requesting all States to maintain such national controls and procedures and to take such other actions consistent with guidelines to be established for the full implementation of the arms sanctions against Iraq). The Council reiterated that call in: S/RES/700 (17 June 1991), operative paragraph 3. Also in connection with the Iraq sanctions régime, see: S/RES/1051 (27 March 1996), operative paragraph 13 (calling upon all States to adopt as soon as possible such measures as necessary under their national procedures to comply with the export/import monitoring mechanism for Iraq).

For the former Yugoslavia sanctions régime, see: S/RES/820 (17 April 1993), operative paragraph 19 (calling upon States to bring proceedings against persons and entities violating the embargo and to impose appropriate penalties).

For the Somalia sanctions régime, see: S/PRST/2000/22 (29 June 2000): *Presidential Statement of 29 June 2000* (urging all States to take all necessary steps to ensure full implementation and enforcement of the embargo). The Council against urged States to take the necessary steps to ensure full implementation and enforcement of the embargo in: S/RES/1356 (19 June 2001), operative paragraph 1; S/PRST/2001/1 (11 January 2001): *Presidential Statement of 11 January 2001*.

For the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/787 (16 November 1992), operative paragraph 11 (calling upon all States to take all necessary steps to ensure that none of their exports were diverted to the Federal Republic of Yugoslavia (Serbia-Montenegro) in violation of the sanctions); S/RES/820 (17 April 1993), operative paragraphs 13 (requiring States to take steps to prevent the diversion to the territory of the Federal Republic of Yugoslavia (Serbia-Montenegro) of commodities and products said to be destined for other areas), 19 (calling upon States to bring proceedings against persons and entities violating the sanctions and to impose appropriate penalties).

For the Bosnian Serb sanctions régime, see: S/RES/820 (17 April 1993), operative paragraph 19 (calling upon States to bring proceedings against persons and entities violating the sanctions and to impose appropriate penalties); S/RES/942 (23 September 1994), operative paragraph 18 (requiring States to take steps to prevent the diversion of benefits to areas the control of Bosnian Serb forces from other places, and in particular from the United Nations Protected Areas in Croatia).

For the Haiti sanctions régime, see: S/RES/841 (16 June 1993), operative paragraph 12 (calling upon States to bring proceedings against persons and entities violating the sanctions and to impose appropriate penalties).

For the UNITA sanctions régime, see: S/RES/864 (15 September 1993), operative paragraph 21 (calling upon States to bring proceedings against persons and entities violating the sanctions and imposing appropriate penalties); S/RES/1295 (18 April 2000), operative paragraphs 8 (encouraging all States to exercise due diligence, in order to prevent the diversion or trans-shipment of weapons to unauthorized end-users or unauthorized destinations where such diversion or trans-shipment risked resulting in the violation of sanctions, including by requiring end-use documentation or equivalent measures before exports from their territories were allowed), 15 (calling upon all States to enforce strictly safety and control regulations relating to the transportation by air of fuel and other hazardous commodities, in particular in the area around Angola, urging States to develop such regulations where they did not yet exist, and requesting States to provide relevant information to the IATA, the ICAO and the 864 Committee), 21 (calling upon all States to work with financial institutions on their territory to develop procedures to facilitate the identification of funds and financial assets that might be subject to the sanctions and to facilitate the freezing of such assets), 22 (inviting States to review the status of officials and representatives of UNITA designated by the 864 Committee and believed to be residing on their territory, with a view to suspending or cancelling their travel documents, visas and residence permits in conformity with the sanctions), 23 (calling upon States that had issued passports to officials of UNITA and adult members of their families designated by the 864 Committee to cancel those passports in conformity with the sanctions and to report to the 864 Committee the status of their efforts in that regard), 27 (urging all States, including those geographically close to Angola, to take immediate steps to enforce, strengthen or enact legislation making it a criminal offence under domestic law for their nationals or other individuals operating on their territory to violate the sanctions, where they had not done so, and to inform the 864 Committee of the adoption of such measures, and inviting States to report the results of all related investigations or prosecutions to the 864 Committee), and 28 (encouraging States to inform relevant professional associations and certification bodies about the sanctions, to seek action by those bodies where those measures were violated, and to consult with such bodies with a view to improving the implementation of the sanctions).

For the Rwanda sanctions régime, see: S/RES/1053 (23 April 1996), operative paragraphs 5 (urging all States, and in particular those in the region, to intensify efforts to prevent military training and the sale or supply of weapons to militia groups or former Rwandan government forces, and to take the steps necessary to ensure the effective implementation of the arms embargo, including by creating all necessary national mechanisms for implementation), 9 (calling States, and in particular those whose nationals had been implicated by the Commission's report, to investigate the apparent complicity of their officials or private citizens in the purchase of arms from Seychelles, in June 1994, and in other suspected violations of the relevant Council resolutions).

For the Sierra Leone sanctions régime, see: S/RES/1306 (5 July 2000), operative paragraph 17 (calling upon States to enforce, strengthen or enact legislation making it a criminal offence under domestic law for their nationals or other persons operating on their territory to act in violation of the arms sanctions against Sierra Leone, and to report to the 1132 Committee on the implementation of those sanctions).

For the Kosovo sanctions régime, see: S/RES/1199 (23 September 1998), operative paragraph 11 (requesting States to pursue all means consistent with their domestic legislation and relevant international law to prevent funds collected on their territory being used to contravene the sanctions).

For the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1267 (15 October 1999), operative paragraph 8 (calling upon States to bring proceedings against persons and entities within their jurisdiction that violated the sanctions and to impose appropriate penalties); S/RES/1333 (19 December 2000), operative paragraphs 14 (urging States to take steps to restrict the entry into or transit through their territory of senior Taliban officials, ex urging States to take steps to restrict the entry into or transit through their territory of senior Taliban official, except where travel was for humanitarian purposes, including religious obligations such as the

called upon or requested States: to cooperate with sanctions-related subsidiary bodies, including the Sanctions Committees,⁵⁰ the bodies of experts,⁵¹ Commissions,⁵² and

performance of the Hajj, or where it promoted the peaceful resolution of the conflict in Afghanistan or compliance with the objectives of the sanctions régime), 18 (calling again upon States to bring proceedings against persons and entities within their jurisdiction that violated the sanctions and to impose appropriate penalties); and S/RES/1363 (30 July 2001), operative paragraph 8 (urging all States to take immediate steps to enforce and strengthen, through legislative enactments or administrative measures, the measures imposed under their domestic laws or regulations against their nationals and other individuals or entities operating on their territory, to prevent and punish violations of the sanctions and to inform the 1267 Committee of the adoption of such measures, and invited States to report the results of all related investigations or enforcement actions to the Committee). The Council reiterated its latter “urging” in S/RES/1390 (16 January 2002), operative paragraph 8; S/RES/1455 (17 January 2003), operative paragraph 5.

For the Liberia II sanctions régime, see: S/RES/1343 (7 March 2001), operative paragraph 21 (calling upon States to take appropriate measures to ensure that individuals and companies in their jurisdiction acted in conformity with United Nations sanctions and to take the necessary judicial and administrative actions to end illegal activities by those individuals and companies). The Council repeated that call in: S/RES/1408 (6 May 2002), operative paragraph 18; S/RES/1478 (6 May 2003), operative paragraph 27. Also in connection with the Liberia sanctions régime (in the second instance), see: S/RES/1408 (6 May 2002), operative paragraph 19 (requesting all States, and in particular arms exporting countries, to exercise the highest degree of responsibility in weapons transactions to prevent the illegal diversion and re-export of those weapons).

⁴⁹ For the Southern Rhodesian sanctions régime, see: S/RES/333 (22 May 1973), operative paragraph 5 (requesting States engaged in trade relations with South Africa and Portugal, which had continued to trade with Southern Rhodesia in violation of the sanctions, to ensure that purchase contracts stipulated the prohibition of dealing in goods of Southern Rhodesian origin and that sales contracts included a prohibition of resale or re-export of goods to Southern Rhodesia).

For the UNITA sanctions régime, see: S/RES/1127 (28 August 1997), operative paragraph 6 (urging all States to stop travel by their officials and official delegations to UNITA headquarters, except for the purposes of travel to promote the peace process and humanitarian assistance); S/RES/1295 (18 April 2000), operative paragraphs 9 (inviting States to convene one or more conferences of representatives of countries that were manufacturers and, in particular, exporters of weapons for the purpose of developing proposals to stem the illicit flow of arms into Angola), 20 (encouraging States to convene a conference of experts to explore possibilities to strengthen the implementation of the financial sanctions against UNITA).

For the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1267 (15 October 1999), operative paragraph 5 (urging all States to cooperate with efforts to ensure that Usama Bin Laden was turned over to authorities in a country where he had been indicted, or to a country where he would be brought to justice); S/RES/1333 (19 December 2000), operative paragraph 7 (urging all States maintaining diplomatic relations with the Taliban to reduce significantly the number and level of the staff at Taliban missions and posts and to restrict or control the movement within their territory of all remaining staff).

⁵⁰ For the Southern Rhodesian sanctions régime, see: S/RES/333 (22 May 1973), operative paragraph 8 (calling upon all States to inform the 253 Committee of their present sources of supply and quantities of chrome, asbestos, nickel, pig iron, tobacco, meat and sugar, together with the quantities of those goods they had originally obtained from Southern Rhodesia prior to the application of sanctions).

For the South Africa sanctions régime, see: S/RES/421 (9 December 1977), operative paragraph 2 (calling upon all States to cooperate fully with the 421 Committee in the effective implementation of the sanctions, including by supplying information sought by that Committee).

For the Iraq sanctions régime, see: S/RES/661 (6 August 1990), operative paragraph 7 (calling upon States to cooperate fully with the 661 Committee in the fulfilment of its tasks, including by supplying such information as the Committee might seek). The Council reaffirmed this call in subsequent resolutions connected with the sanctions régime. See: S/RES/670 (25 September 1990), operative paragraph 10; S/RES/1051 (27 March 1996), operative paragraph 12.

For the former Yugoslavia sanctions régime, see: S/RES/724 (15 December 1991), operative paragraph 5(c) (calling upon all States to cooperate fully with the 724 Committee in the fulfilment of its tasks concerning the effective implementation of the arms embargo). The Council reiterated that call in a number of subsequent resolutions. See: S/RES/740 (7 February 1992), operative paragraph 8; S/RES/757 (30 May 1992), operative paragraph 14.

For the Libya sanctions régime, see: S/RES/748 (31 March 1992), operative paragraph 10 (calling upon States to cooperate fully with the 748 Committee, including supplying such information as it may seek).

For the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 14 (calling upon all States to cooperate fully with the 724 Committee).

For the Bosnian Serb sanctions régime, see: S/RES/942 (23 September 1994), operative paragraph 17 (requiring States from which commodities or products were to be shipped to areas under the control of the Bosnian Serbs in accordance with the permitted exemptions from the sanctions, to report the source of funds from which payment was to be made to the 724 Committee).

For the Haiti sanctions régime, see: S/RES/841 (16 June 1993), operative paragraph 11 (calling upon all States to cooperate fully with the 841 Committee, including by supplying such information as it sought).

For the UNITA sanctions régime, see: S/RES/864 (15 September 1993), operative paragraph 23 (calling upon all States to cooperate fully with the 864 Committee, including by supplying such information as it sought).

For the Rwanda sanctions régime, see: S/PRST/1995/22 (27 April 1995): *Presidential statement of 27 April 1995* (inviting States with information on the transport of arms into countries neighbouring Rwanda for the purpose of their use in Rwanda in contravention of the sanctions, to pass that information on to the 918 Committee); S/RES/1011 (16 August 1995), operative paragraph 11 (requiring States to notify the 918 Committee of all exports of arms and related *matériel* being made to Rwanda, in accordance with the exemption from the sanctions régime of arms and related *matériel* exported to the Government of Rwanda through named points of entry).

For the Sierra Leone sanctions régime, see: S/RES/1171 (5 June 1998), operative paragraph 4 (requiring all States to notify the 1132 Committee of all exports from their territories to Sierra Leone of arms or related *matériel*).

For the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1267 (15 October 1999), operative paragraph 9 (calling upon all States to cooperate fully with the 1267 Committee, including by supplying information it sought). That call was reiterated in; S/RES/1333 (19 December 2000), operative paragraph 19; S/RES/1390 (16 January 2002), operative paragraph 7; S/RES/1455 (17 January 2003), operative paragraph 7.

For the Liberia II sanctions régime, see: S/RES/1343 (7 March 2001), operative paragraph 24 (urging all States to cooperate fully with the 1343 Committee). The Council repeated that call in: S/RES/1408 (6 May 2002), operative paragraph 21; S/RES/1458 (28 January 2003), operative paragraph 7; S/RES/1478 (6 May 2003), operative paragraph 33.

monitoring mechanisms.⁵³ States have been called upon or requested by the Council: to implement sanctions notwithstanding the existence of any conflicting legal obligation;⁵⁴ to

⁵¹ In connection with the Somalia sanctions régime, see: S/RES/1425 (22 July 2002), operative paragraph 6 (requesting all States to cooperate fully with the Somalia Panel of Experts); S/RES/1407 (3 May 2002), operative paragraph 4 (calling on all States to cooperate fully with the Chairman of the 751 Committee in a planned visit to Somalia and the region).

In connection with the UNITA sanctions régime, see: S/RES/1237 (7 May 1999), operative paragraphs 8 (calling upon all States to cooperate fully with the expert panels on UNITA), 9 (calling upon the Governments of the States in which the expert panels on UNITA would carry out their mandate to cooperate fully with the panels, including by adopting measures to ensure the freedom of movement, independence and security of the panels and their members).

In connection with the Sierra Leone sanctions régime, see: S/RES/1306 (5 July 2000), operative paragraph 21 (urging all States to cooperate with the Sierra Leone Panel of Experts in the discharge of its mandate).

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 24 (urging all States to cooperate fully with the Liberia Panel of Experts). The Council repeated that call in: S/RES/1395 (27 February 2002), operative paragraph 6; S/RES/1408 (6 May 2002), operative paragraph 21; S/RES/1458 (28 January 2003), operative paragraph 7; S/RES/1478 (6 May 2003), operative paragraph 33.

⁵² In connection with the Iraq sanctions régime, see: S/RES/1051 (27 March 1996), operative paragraph 12 (calling upon all States to cooperate fully with UNSCOM in the fulfilment of its tasks in connection with the export/import monitoring mechanism for Iraq); S/RES/1441 (8 November 2002), operative paragraph 10 (requesting all Member States to give full support to UNMOVIC and the IAEA in the discharge of their mandates, including by providing any information related to prohibited programmes or other aspects of their mandates, including on Iraqi attempts since 1998 to acquire prohibited items, and by recommending sites to be inspected, persons to be interviewed, conditions of such interviews, and data to be collected, the results of which were to be reported to the Council by UNMOVIC and the IAEA).

In connection with the Rwanda sanctions régime, the Council called upon States: to make available to the International Commission of Inquiry any information in their possession relating to the Commission's mandate [S/RES/1013 (7 September 1995), operative paragraph 3; S/RES/1053 (23 April 1996), operative paragraph 10; S/RES/1161 (9 April 1998), operative paragraph 2]; to cooperate fully with the Commission [S/RES/1013 (7 September 1995), operative paragraphs 5, 7; S/RES/1029 (12 December 1995), operative paragraph 12; S/RES/1053 (23 April 1996), operative paragraphs 8, 10; S/RES/1161 (9 April 1998), operative paragraph 3]; and to investigate fully reports of their officials and nationals suspected of having violated the sanctions [S/RES/1053 (23 April 1996), operative paragraph 8].

⁵³ In connection with the Iraq sanctions régime, see: S/RES/1051 (27 March 1996), operative paragraph 5 (requiring all States to notify the export/import monitoring mechanism for Iraq of the planned sale or supply to Iraq from their territories of any items or technologies that might have dual-use potential).

In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraph 4 (calling upon all States to cooperate with the UNITA monitoring mechanism in the discharge of its mandate). The Council repeated that request in: S/RES/1336 (23 January 2001), operative paragraph 7; S/RES/1348 (19 April 2001), operative paragraph 7; S/RES/1374 (19 October 2001), operative paragraph 9; S/RES/1404 (18 April 2002), operative paragraph 8; S/RES/1439 (18 October 2002), operative paragraph 7.

In connection with the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1363 (30 July 2001), operative paragraph 7 (calling upon all States to cooperate with the Afghanistan/Taliban/Al Qaida monitoring mechanism); S/RES/1390 (16 January 2002),

54

operative paragraph 7 (urging all States to cooperate fully with the Monitoring Group). The Council repeated that call in S/RES/1455 (17 January 2003), operative paragraph 7.

In connection with the South Africa sanctions régime, see: S/RES/418 (4 November 1977), operative paragraph 3 (calling upon all States to review contractual arrangements with and licences granted to South Africa relating to the manufacture and maintenance of arms, ammunition of all types and military equipment and vehicles, with a view to terminating them).

In connection with the Iraq sanctions régime, see: S/RES/661 (6 August 1990), operative paragraph 5 (calling upon all States, including States non-members of the United Nations, to act strictly in accordance with the sanctions, notwithstanding any contract entered into or licence granted before the date the sanctions entered into force). That call was reiterated in: S/RES/670 (25 September 1990), operative paragraph 3; S/RES/687 (3 April 1991), operative paragraph 25. Also in connection with the Iraq sanctions régime, see: S/RES/687 (3 April 1991), operative paragraph 29 (requiring all States to take the necessary measures to ensure that no claim lay at the instance of the Government of Iraq, or of Iraqi nationals and entities, in connection with any contract or other transaction where its performance had been affected by the sanctions).

In connection with the Libya sanctions régime, see: S/RES/748 (31 March 1992), operative paragraph 7 (calling upon all States, including States not members of the U.N., to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations). That call was repeated in S/RES/883 (11 November 1993), operative paragraph 12.

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 11 (calling upon all States, including States not members of the United Nations, to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations).

In connection with the Haiti sanctions régime, see: S/RES/841 (16 June 1993), operative paragraph 9 (calling upon all States to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations). The Council subsequently reiterated such a call when it strengthened the sanctions in May 1994. See: S/RES/917 (6 May 1994), operative paragraphs 11, 12.

In connection with the UNITA sanctions régime, see: S/RES/864 (15 September 1993), operative paragraph 20 (calling upon all States to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations). The Council repeated that call in S/RES/1127 (28 August 1997), operative paragraph 10.

In connection with the Rwanda sanctions régime, see: S/RES/918 (17 May 1994), operative paragraph 15 (calling upon all States to act in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations).

In connection with the Sudan sanctions régime, see: S/RES/1054 (26 April 1996), operative paragraph 5 (calling upon all States, including States not members of the United Nations, to act strictly in conformity with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations).

In connection with the Sierra Leone sanctions régime, see: S/RES/1132 (8 October 1997), operative paragraph 11 (calling upon all States to act strictly in conformity with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations). The Council repeated that call in S/RES/1306 (5 July 2000), operative paragraph 9.

In connection with the Kosovo sanctions régime, see: S/RES/1160 (31 March 1998), operative paragraph 10 (calling upon all States to act in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations).

In connection with the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1267 (15 October 1999), operative paragraph 7 (calling upon all States to act in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations). The Council repeated that call in S/RES/1333 (19 December 2000), operative paragraph 17.

undertake effective monitoring of compliance with sanctions;⁵⁵ to provide assistance to States undertaking authorized action to enforce sanctions;⁵⁶ and to take action to enforce

In connection with the Ethiopia and Eritrea sanctions régime, see: S/RES/1298 (17 May 2000), operative paragraph 9 (calling upon all States to act strictly in conformity with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations).

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 22 (calling upon all States to act strictly in accordance with the sanctions notwithstanding the existence of any conflicting legal rights or obligations).

⁵⁵ In connection with the South Africa sanctions régime, see: S/RES/591 (28 November 1986), operative paragraph 11 (requesting all States to adopt measures to investigate past and to prevent future violations of sanctions, as well as to strengthen machinery for the implementation of sanctions, with a view to the effective monitoring and verification of transfers of arms and other equipment in violation of the sanctions).

In connection with the Somalia sanctions régime, see, e.g., S/RES/767 (27 July 1992), operative paragraph 10 (stressing the need for the observance and strict monitoring of the embargo). The Council against stressed such a need in: S/RES/775 (28 August 1992), operative paragraph 12; S/RES/954 (4 November 1994), operative paragraph 12.

In connection with the sanctions régime against the Bosnian Serbs, see: S/RES/942 (23 September 1994), operative paragraph 16 (requiring States to prevent shipments of commodities and products destined for those areas under the control of Bosnian Serb forces from violating the sanctions by ensuring that they were physically inspected by the Sanctions Assistance Missions or by competent national authorities at loading to verify and seal their contents or that the contents could be easily verified).

In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraph 8 (encouraging all States to ensure effective monitoring and regulation in the export of weapons, including by private arms brokers).

In connection with the Kosovo sanctions régime, see: S/RES/1199 (23 September 1998), operative paragraph 9 (urging States represented in the Federal Republic of Yugoslavia to make available personnel to fulfil the responsibility of carrying out effective and continuous international monitoring in Kosovo until the objectives of the sanctions régime had been achieved); S/RES/1203 (24 October 1998), operative paragraph 7 (urging States to make personnel available to the Verification Mission in Kosovo).

⁵⁶ In connection with the Iraq sanctions régime, see: S/RES/665 (25 August 1990), operative paragraph 3 (requesting all States to provide, in accordance with the Charter of the United Nations, such assistance as might be required by the States cooperating with the Government of Kuwait).

In connection with the former Yugoslavia sanctions régime, see: S/RES/787 (16 November 1992), operative paragraph 15 (requesting States to provide, in accordance with the Charter, such assistance as might be required by States acting in pursuance of the authority to use necessary measures to implement the embargo); S/RES/820 (17 April 1993), operative paragraph 17 (reiterating the request to all States to provide such assistance as was required by riparian States to ensure that shipping on the Danube did not violate the embargo).

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/787 (16 November 1992), operative paragraph 15 (requesting States to provide, in accordance with the Charter, such assistance as might be required by States acting in pursuance of its authority to use necessary measures to implement the sanctions); S/RES/820 (17 April 1993), operative paragraph 17 (reiterating the request to all States to provide such assistance as was required by riparian States to ensure that shipping on the Danube did not violate the sanctions).

sanctions.⁵⁷ The Council has called upon or requested States: to report on measures taken to implement sanctions to the Secretary-General⁵⁸ or to the relevant Sanctions Committee,⁵⁹

In connection with the sanctions régime against the Bosnian Serbs, see: S/RES/820 (17 April 1993), operative paragraph 17 (requesting all States to provide such assistance as was required by riparian States to ensure that shipping on the Danube did not violate the sanctions).

⁵⁷ In connection with the Iraq sanctions régime, see: S/RES/670 (25 September 1990), operative paragraph 8 (calling upon States to detain or deny entry to Iraqi ships which were being or had been used in violation of the sanctions). As a result of that authorisation, a multinational interception force was stationed off the coast of Iraq for more than a decade. The force's operations were focussed in the Red Sea from 1991-1994, after which they shifted to the Persian Gulf. For information relating to the force's activities, see: S/1996/700 (26 August 1996), annex: *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, paragraphs 80-85. The force routinely intercepted vessels going to and from Iraq, in order to inspect cargo and verify that the vessels were not violating the Iraq sanctions régime.

In connection with the former Yugoslavia sanctions régime, see: S/RES/787 (16 November 1992), operative paragraph 12 (invoking Chapters VII and VIII of the Charter and calling upon States, acting nationally or through regional agencies or arrangements, to use the necessary measures to halt outward and inward maritime shipping in order to inspect and verify that cargo did not violate the arms embargo). This call was reaffirmed in S/RES/820 (17 April 1993), operative paragraph 29. Also in connection with the former Yugoslavia sanctions régime, see: S/RES/820 (17 April 1993), operative paragraph 25 (requiring States to detain vessels, freight vehicles, rolling stock, aircraft and cargoes suspected of having violated the sanctions).

In connection with the Somalia sanctions régime, see: S/RES/794 (3 December 1992), operative paragraph 16 (invoking Chapters VII and VIII in calling upon States, acting nationally or through regional agencies or arrangements, to use such measures as might be necessary to ensure the strict implementation of the arms embargo).

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/787 (16 November 1992), operative paragraph 12 (invoking Chapters VII and VIII of the Charter in calling upon States, acting nationally or through regional agencies or arrangements, to use such measures as necessary to halt outward and inward maritime shipping in order to inspect and verify that cargo did not violate the sanctions). That call was reaffirmed in S/RES/820 (17 April 1993), operative paragraph 29. Also in connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/820 (17 April 1993), operative paragraphs 24 (requiring States to impound all vessels, freight vehicles, rolling stock and aircraft in their territories if owned or possessed by an individual or entity from the Federal Republic of Yugoslavia (Serbia-Montenegro)), 25 (requiring States to detain vessels, freight vehicles, rolling stock, aircraft and cargoes suspected of having violated the sanctions).

In connection with the sanctions régime against the Bosnian Serbs, see: S/RES/820 (17 April 1993), operative paragraph 25 (requiring States in general to detain vessels, freight vehicles, rolling stock, aircraft and cargoes suspected of having violated the sanctions).

⁵⁸ In connection with the Iraq sanctions régime, see: S/RES/700 (17 June 1991), operative paragraph 4 (requesting all States to report to the Secretary-General on the measures they had instituted for meeting the obligations to implement the arms sanctions).

In connection with the Libya sanctions régime, see: S/RES/748 (31 March 1992), operative paragraph 8 (requesting all States to report to the Secretary-General on measures taken to implement the sanctions). That request was repeated in S/RES/883 (11 November 1993), operative paragraph 13.

to take action to implement humanitarian programmes established to minimize the

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 12 (requesting all States to report to the Secretary-General on measures taken to implement the sanctions).

In connection with the Haiti sanctions régime, see: S/RES/841 (16 June 1993), operative paragraph 13 (requesting all States to report to the Secretary-General on the measures taken to implement the sanctions). The Council repeated that call in S/RES/917 (6 May 1994), operative paragraph 13.

In connection with the UNITA sanctions régime, see: S/RES/864 (15 September 1993), operative paragraph 24 (requesting all States to report to the Secretary-General on measures adopted to meet their obligations under the sanctions régime). That request was repeated in: S/RES/1127 (28 August 1997), operative paragraph 13; S/RES/1135 (29 October 1997), operative paragraph 8.

In connection with the Sudan sanctions régime, see: S/RES/1054 (26 April 1996), operative paragraph 6 (requesting States to report to the Secretary-General on steps taken to implement the sanctions). The Council repeated that request in S/RES/1070 (16 August 1996), operative paragraph 2.

In connection with the Sierra Leone sanctions régime, see: S/RES/1132 (8 October 1997), operative paragraph 13 (requesting States to report to the Secretary-General on steps taken to give effect to the sanctions).

In connection with the Ethiopia and Eritrea sanctions régime, see: S/RES/1298 (17 May 2000), operative paragraph 11 (requesting States to report to the Secretary-General on steps taken to give effect to the sanctions).

59

In connection with the Somalia sanctions régime, see: S/RES/1407 (3 May 2002), operative paragraph 8 (requesting all States to report to the 751 Committee on measures they had taken to ensure the full implementation of the arms embargo).

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/820 (17 April 1993), operative paragraph 21 (calling upon States to report to the 724 Committee on actions taken to freeze funds belonging to or controlled by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) or commercial, industrial or public undertakings from the Federal Republic of Yugoslavia (Serbia and Montenegro)).

In connection with the Sierra Leone sanctions régime, see: S/RES/1306 (5 July 2000), operative paragraph 8 (requesting all States to report to the 1132 Committee on actions taken to implement the diamond sanctions).

In connection with the Kosovo sanctions régime, see: S/RES/1160 (31 March 1998), operative paragraph 12 (requesting States to report to the 1160 Committee on steps taken to implement the sanctions).

In connection with the Afghanistan/Taliban/Al Qaida sanctions régime, see: S/RES/1267 (15 October 1999), operative paragraph 10 (requesting all States to report to the 1267 Committee on steps taken to implement the sanctions). The Council repeated that call in: S/RES/1333 (19 December 2000), operative paragraph 20; S/RES/1390 (16 January 2002), operative paragraph 6. In January 2003, the Council made a more detailed request, calling on all States to submit an updated report to the 1267 Committee on steps taken to implement the sanctions and on all related investigations and enforcement action, including a comprehensive summary of frozen assets of listed individuals and entities within Member State territories: S/RES/1455 (17 January 2003), operative paragraph 6.

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 18 (requesting all States to report to the 1343 Committee on steps taken to implement the sanctions). The Council repeated that call in: S/RES/1408 (6 May 2002), operative paragraph 15.

humanitarian consequences of sanctions;⁶⁰ to report information concerning violations of sanctions to the relevant Sanctions Committee;⁶¹ to report on measures taken in accordance

⁶⁰ The Council authorized or called upon States to take a range of action in connection with the Iraq Oil-for-Food Programme. The Council first authorized States to permit the import of petroleum and petroleum products to finance the Programme in August 1991. See: S/RES/706 (15 August 1991), operative paragraph 1. After a number of years in which Iraq refused to comply with the scheme, the Council again attempted to implement the Programme in 1995, with more success. See: S/RES/986 (14 April 1995), operative paragraph 1. For extensions of that initial authorisation, see: S/RES/1111 (4 June 1997), operative paragraph 1; S/RES/1143 (4 December 1997), operative paragraph 1; S/RES/1153 (20 February 1998), operative paragraph 1; S/RES/1158 (25 March 1998), operative paragraph 1; S/RES/1210 (24 November 1998), operative paragraph 1; S/RES/1242 (21 May 1999), operative paragraph 1; S/RES/1281 (10 December 1999), operative paragraph 1; S/RES/1284 (17 December 1999), operative paragraph 15; S/RES/1302 (8 June 2000), operative paragraph 1; S/RES/1330 (5 December 2000), operative paragraph 1; S/RES/1352 (1 June 2001), operative paragraph 1; S/RES/1360 (3 July 2001), operative paragraph 1; S/RES/1382 (29 November 2001), operative paragraph 1; S/RES/1409 (14 May 2002), operative paragraph 1; S/RES/1443 (25 November 2002), operative paragraph 1; S/RES/1447 (4 December 2002), operative paragraph 1; S/RES/1454 (30 December 2002), operative paragraph 1; S/RES/1472 (28 March 2003).

In other requests or authorizations connected with the Oil-for-Food Programme, the Council: (a) called upon States to cooperate fully in the implementation of the Programme [see: S/RES/712 (19 September 1991), operative paragraph 11; S/RES/1153 (20 February 1998), operative paragraph 6; S/RES/1210 (24 November 1998), operative paragraph 11; S/RES/1242 (21 May 1999), operative paragraph 11; S/RES/1281 (10 December 1999), operative paragraph 11; S/RES/1302 (8 June 2000), operative paragraph 15; S/RES/1330 (5 December 2000), operative paragraph 16; S/RES/1360 (3 July 2001), operative paragraph 10]; (b) authorized States to permit the export to Iraq, subject to the approval of the 661 Committee, of parts and equipment for the safe operation of the Kirkuk-Yumurtalik pipeline system [S/RES/986 (14 April 1995), operative paragraph 9(a)]; (c) authorized States to permit activities necessary for the exports authorized under the Programme, including financial transactions related thereto [S/RES/986 (14 April 1995), operative paragraph 9(b)]; (d) appealed to all States to cooperate in the timely provision to Iraq of humanitarian supplies permitted under the Programme [S/RES/1153 (20 February 1998), operative paragraph 7; S/RES/1210 (24 November 1998), operative paragraph 12; S/RES/1242 (21 May 1999), operative paragraph 12; S/RES/1281 (10 December 1999), operative paragraph 12; S/RES/1302 (8 June 2000), operative paragraph 16; S/RES/1330 (5 December 2000), operative paragraph 21; S/RES/1360 (3 July 2001), operative paragraph 13; S/RES/1382 (29 November 2001), operative paragraph 5]; (e) authorized States to permit the export to Iraq of the necessary parts and equipment to enable Iraq to increase the export of petroleum and petroleum products to the amount permitted under the Programme [S/RES/1175 (19 June 1998), operative paragraph 1]; (f) urged all States to take steps to minimize delays in processing applications under the OFFP identified in paragraphs 128-134 of: S/2000/1132 (29 November 2000): Report of the Secretary-General pursuant to paragraph 5 of resolution 1302 (2000)] [S/RES/1330 (5 December 2000), operative paragraph 14]; and (g) authorized States to permit the sale or supply to Iraq of any commodities and products other than military commodities and products and military-related commodities and products covered by the Goods Review List [S/RES/1409 (14 May 2002), operative paragraph 3. The Goods Review List was adopted by operative paragraph 3 of the same resolution, and was circulated as: S/2002/515 (3 May 2002), annex: *Goods Review List*.

⁶¹ In connection with the former Yugoslavia sanctions régime, see: S/RES/740 (7 February 1992), operative paragraph 8 (calling upon all States to report to the 724 Committee any information brought to their attention concerning violations of the arms embargo).

with an authorisation or request to enforce sanctions;⁶² to cooperate with an initiative to achieve the objectives of a sanctions régime;⁶³ to provide assistance to regional bodies engaged in sanctions-monitoring activities;⁶⁴ to provide financial assistance to facilitate the

In connection with the Somalia sanctions régime, see: S/PRST/2000/22 (29 June 2000): *Presidential Statement of 29 June 2000* (urging all States to report to the 751 Committee any information on possible violations of the arms embargo). The Council repeated that call in: S/PRST/2001/1 (11 January 2001): *Presidential Statement of 11 January 2001*; S/PRST/2002/8 (28 March 2002): *Presidential Statement of 28 March 2002*; S/RES/1407 (3 May 2002), operative paragraph 9; S/RES/1425 (22 July 2002), operative paragraph 7; S/RES/1474 (8 April 2003), operative paragraph 9.

In connection with the sanctions régime against Liberia (in the first instance), see: S/RES/1001 (30 June 1995), operative paragraph 10 (reminding all States of their obligation to report any violations of the embargo to the 985 Sanctions Committee). The Council again reminded States of that obligation in: S/RES/1014 (15 September 1995), operative paragraph 11; S/RES/1020 (10 November 1995), operative paragraph 11; S/RES/1041 (29 January 1996), operative paragraph 14; S/PRST/1996/16: *Presidential statement of 9 April 1996*; S/RES/1059 (31 May 1996), operative paragraph 11; S/RES/1071 (30 August 1996), operative paragraph 12; S/RES/1083 (27 November 1996), operative paragraph 10; S/RES/1100 (27 March 1997), operative paragraph 9; S/RES/1116 (27 June 1997), operative paragraph 7.

In connection with the Sierra Leone sanctions régime, see: S/RES/1181 (13 July 1998), operative paragraph 13 (reaffirming the obligation of all States to bring all instances of violations of the arms sanctions before the 1132 Committee); S/RES/1306 (5 July 2000), operative paragraphs 16 (urging all States to report to the 1132 Committee on possible violations of the diamond sanctions), 18 (urging all States to report to the 1132 Committee information on possible violations of the arms sanctions).

In connection with the Ethiopia and Eritrea sanctions régime, see: S/RES/1298 (17 May 2000), operative paragraph 12 (requesting all States to report information on possible violations of the sanctions to the 1298 Committee).

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 24 (urging all States to cooperate fully with the 1343 Committee and the Liberia Panel of Experts, including by supplying information on possible violations of the sanctions). The Council repeated that call in: S/RES/1408 (6 May 2002), operative paragraph 21; S/RES/1458 (28 January 2003), operative paragraph 7; S/RES/1478 (6 May 2003), operative paragraph 33.

⁶² In connection with the former Yugoslavia sanctions régime, see: S/RES/787 (16 November 1992), operative paragraph 14 (requesting States to report, in coordination with the Secretary-General, to the Security Council on any measures taken to ensure that maritime or riparian shipping did not violate the arms embargo).

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/787 (16 November 1992), operative paragraph 14 (requesting States to report, in coordination with the Secretary-General, to the Security Council on any measures taken to ensure that maritime or riparian shipping did not violate the sanctions).

⁶³ In connection with the Libya sanctions régime, see: S/RES/1192 (27 August 1998), operative paragraph 4 (requiring all States to cooperate with initiative for the trial of two persons charged with the bombing of Pan Am flight 103 before a Scottish court sitting in the Netherlands).

⁶⁴ In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraph 32 (urging States to consider the provision of financial and technical assistance to SADC).

work of sanction-related subsidiary bodies;⁶⁵ to cooperate with the efforts of a regional organization to implement sanctions;⁶⁶ to provide assistance to a legitimate Government in its efforts to implement sanctions against a target located within its territories;⁶⁷ and to provide assistance to States in the region surrounding a target in implementing sanctions.⁶⁸

10.2.2 Particular types of States

In its oversight of U.N. sanctions régimes, the Council has also addressed its requests specifically to a State or group of States considered to be in a position to exercise influence over the activities of a target. It has directed such requests at States Members of the United Nations, at States non-members of the United Nations, at the administering Power of a target, at States neighbouring or located in the same region as the target, at legitimate Governments in whose territories a target is located, at States alleged to have

⁶⁵ In connection with the Rwanda sanctions régime, see: S/RES/1013 (7 September 1995), operative paragraph 8 (encouraging States to make contributions to the Trust Fund for Rwanda, to supplement the financing for the work of the Commission, and to contribute equipment and services to the Commission). That call was repeated in S/RES/1053 (23 April 1996), operative paragraph 11.

⁶⁶ In connection with the Sierra Leone sanctions régime, see: S/RES/1132 (8 October 1997), operative paragraphs 8 (calling upon all States to cooperate with ECOWAS to ensure the strict implementation of the sanctions), 18 (urging all States to provide technical and logistical support to assist ECOWAS in carrying out its responsibilities in relation to the implementation of the sanctions).

⁶⁷ In connection with the Sierra Leone sanctions régime, see: S/RES/1306 (5 July 2000), operative paragraphs 3 (requesting States to offer assistance to the Government of Sierra Leone to facilitate the operation of a certificate-of-origin régime), 11 (inviting States to offer assistance to the Government of Sierra Leone to develop a well-structured and well-regulated diamond industry providing for the identification of the provenance of rough diamonds).

⁶⁸ In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 16 (calling upon States and relevant international organizations to offer assistance to diamond-exporting West African States seeking to establish Certificate of Origin schemes). The Council reiterated that call in: S/RES/1408 (6 May 2002), operative paragraph 9; S/RES/1478 (6 May 2003), operative paragraph 15. Also in connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 17 (calling upon the international community to provide the necessary assistance to prevent the proliferation and illicit trafficking of light weapons in West Africa, and thus to facilitate the implementation of the ECOWAS moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa).

been violating sanctions, at States playing a particular role connected with achieving a sanctions régime's objectives, at States engaging in relations that are exempt from sanctions, and at States engaging in a particular type of trade activity.

i. States Members of the United Nations

In its oversight of sanctions régimes, the Council has called upon Member States to undertake a range of activities related to the implementation, monitoring and enforcement, including: implementing sanctions;⁶⁹ reporting on measures taken to implement sanctions to the Secretary-General⁷⁰ or to the relevant Sanctions Committee;⁷¹ implementing sanctions notwithstanding the existence of any conflicting legal obligation;⁷² taking effective measures

⁶⁹ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/232 (16 December 1966), operative paragraph 6 (calling upon all States Members of the United Nations to implement the sanctions in accordance with Article 25 of the United Nations Charter); S/RES/253 (29 May 1968), operative paragraph 11 (calling upon all States Members of the United Nations to carry out its decisions in accordance with Article 25 of the Charter). The Council also addressed such a call towards the permanent members of the Council. See: S/RES/253 (29 May 1968), operative paragraph 16 (calling upon States Members of the United Nations, and particularly those with primary responsibility under the Charter for the maintenance of international peace and security, to assist effectively in the implementation of the sanctions). The Council reaffirmed that call in S/RES/277 (18 March 1970), operative paragraph 17.

In connection with the UNITA sanctions régime, see: S/RES/1157 (20 March 1998), operative paragraph 4 (calling upon all Member States to implement the sanctions fully). That call was repeated in: S/RES/1164 (29 April 1998), operative paragraph 14; S/RES/1221 (12 January 1999), operative paragraph 7; S/PRST/1999/3 (21 January 1999): *Presidential statement of 21 January 1999*; S/RES/1229 (26 February 1999), operative paragraph 8; S/RES/1237 (7 May 1999), operative paragraph 5; S/RES/1295 (18 April 2000), operative paragraph 1.

⁷⁰ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/232 (16 December 1966), operative paragraph 8. The Council reaffirmed that call in subsequent resolution connected with the sanctions régime. See: S/RES/253 (29 May 1968), operative paragraph 18; S/RES/277 (18 March 1970), operative paragraph 19.

⁷¹ In connection with the UNITA sanctions régime, see: S/RES/1173 (12 June 1998), operative paragraph 21 (requesting Member States to provide the 864 Committee with information on measures taken to implement the sanctions). That request was repeated in: S/RES/1176 (24 June 1998), operative paragraph 4.

⁷² In connection with the sanctions régime against Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 7 (requiring all States Members of the United Nations to give effect to the sanctions, notwithstanding any contract entered into or licence granted).

domestically to prevent the violation of sanctions by their nationals or in their territories;⁷³ taking further action against a target under Article 41;⁷⁴ extending assistance to States confronted by special economic problems as a result of implementing sanctions;⁷⁵ cooperating with the relevant Sanctions Committee;⁷⁶ taking action to ensure that regional organizations, international organizations and the specialized agencies acted in conformity with sanctions;⁷⁷ taking action internationally to enforce sanctions;⁷⁸ taking action

⁷³ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 8 (calling upon all States Members of the United Nations or of the specialized agencies to take all possible measures to prevent activities by their nationals and persons in their territories promoting, assisting or encouraging emigration to Southern Rhodesia, with a view to stopping such emigration); S/RES/277 (18 March 1970), operative paragraphs 3 (calling upon Member States to take measures at the national level to ensure that any act performed by officials and institutions of the illegal régime in Southern Rhodesia were not accorded any recognition by the competent organs of their State) 8 (calling upon Member States to take more stringent measures to prevent circumvention of the sanctions by their nationals, organizations, companies and other institutions).

⁷⁴ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 9 (requesting all States Members of the United Nations or of the specialized agencies to take all possible further action under Article 41 of the Charter to deal with the situation in Southern Rhodesia).

⁷⁵ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 15 (requesting States Members of the United Nations, the United Nations Organization, the specialized agencies and other international organizations in the United Nations system to extend assistance to Zambia as a matter of priority with a view to helping it solve such special economic problems as it might be confronted with from carrying out the sanctions). The Council requested the same actors to increase such assistance in S/RES/277 (18 March 1970), operative paragraph 16.

⁷⁶ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 22 (calling upon States Members of the United Nations [and members of the specialized agencies, as well as the agencies themselves] to supply to the 253 Committee such information as it may seek). The Council reaffirmed that call in subsequent resolutions connected with the sanctions régime. See: S/RES/277 (18 March 1970), operative paragraph 23.

⁷⁷ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/277 (18 March 1970), operative paragraphs 12 (calling upon Member States to take appropriate action to suspend any membership or associate membership that the illegal régime had in the specialized agencies of the United Nations), 13 (urging Member States of any international or regional organizations to suspend the membership of the illegal régime from their respective organizations and to refuse any applications by that régime for membership).

⁷⁸ In connection with the Iraq sanctions régime, see: S/RES/665 (25 August 1990), operative paragraph 1 (calling upon Member States cooperating with the Government of Kuwait and which were deploying maritime forces to the area to use such measures commensurate with the specific circumstances as may be necessary, under the Council's authority, to halt all inward and outward maritime shipping, in order to inspect and verify that it was not violating the sanctions).

internationally to ensure compliance with sanctions;⁷⁹ reporting to the relevant Sanctions Committee regarding action taken to enforce sanctions;⁸⁰ taking action to implement humanitarian programmes established to minimize the humanitarian consequences of sanctions;⁸¹ reporting information concerning violations of sanctions to the relevant Sanctions Committee;⁸² encouraging the Libyan Government to encourage a target to comply with the objectives of a sanctions régime;⁸³ and providing assistance for sanctions monitoring.⁸⁴

ii. *States non-members of the United Nations*

In connection with the Haiti sanctions régime, see: S/RES/875 (16 October 1993), operative paragraph 1 (calling upon Member States, acting nationally or through regional agencies or arrangements, and cooperating with the legitimate Government of Haiti, to use such measures as necessary under its authority to ensure the strict implementation of the sanctions, including halting inbound maritime shipping in order to inspect and verify that their cargoes did not violate the sanctions). The Council repeated that call in S/RES/917 (6 May 1994), operative paragraph 10.

⁷⁹ In connection with the Iraq sanctions régime, see: S/RES/665 (25 August 1990), operative paragraph 2 (inviting Member States to use political and diplomatic measures to ensure compliance with the sanctions).

⁸⁰ In connection with the Iraq sanctions régime, see: S/RES/665 (25 August 1990), operative paragraph 4 (requesting States acting pursuant to the authority to halt inward and outward maritime shipping to submit reports to the Council and the 661 Committee concerning the situation between Iraq and Kuwait).

⁸¹ In connection with the Iraq Oil-for-Food Programme, see: S/RES/1284 (17 December 1999), operative paragraph 19 (encouraging Member States to provide Iraq with supplementary humanitarian and published material of an educational character).

⁸² In connection with the Somalia sanctions régime, see: S/PRST/1999/31 (12 November 1999): *Presidential Statement of 12 November 1999* (urging Member States with information about violations of the embargo to provide that information to the 751 Committee).

In connection with the UNITA sanctions régime, see: S/RES/1127 (28 August 1997), operative paragraph 12 (requesting Member States to provide to the 864 Committee any information relating to violations of sanctions). That request was repeated in: S/RES/1157 (20 March 1998), operative paragraph 4; S/RES/1164 (29 April 1998), operative paragraph 14; S/RES/1173 (12 June 1998), operative paragraph 22; S/RES/1295 (18 April 2000), operative paragraph 26.

⁸³ In connection with the Libya sanctions régime, see: S/RES/883 (11 November 1993), operative paragraph 15 (calling upon Member States to encourage the Libyan Government to respond fully to the requests and decisions in connection with which the sanctions were imposed).

⁸⁴ In connection with the sanctions régimes against the Federal Republic of Yugoslavia (Serbia-Montenegro) and the Bosnian Serbs, see: S/RES/988 (21 April 1995), operative paragraph 6 (requesting Member States to make available the necessary resources to strengthen the ICFY Mission's capacity to carry out its tasks). The ICFY Mission was established to monitor and certify that the Federal Republic of Yugoslavia (Serbia-Montenegro) was adhering to its commitment to close its border with the areas of Bosnia and Herzegovina under the control of the Bosnian Serbs to all but foodstuffs and medical and humanitarian supplies.

The Council specifically addressed States not Members of the United Nations in connection with the Southern Rhodesian sanctions régime, urging them to act in accordance with the sanctions.⁸⁵ The practice of specifically addressing States non-members has not been followed since, although the Council has often clarified that requests addressed to “all States” or to “States” include States non-members.⁸⁶

iii. An administering Power

In the case of the sanctions régime against Southern Rhodesia, the Council requested the United Kingdom, as the administering Power over Southern Rhodesia, to undertake a number of tasks related to the administration, implementation and monitoring of sanctions. Prior to the application of mandatory sanctions, but after the Council had called upon States to apply voluntary sanctions, including diplomatic, arms and oil sanctions,⁸⁷ the Council called upon the United Kingdom to take enforcement action to prevent the arrival at the port of Beira in Mozambique of vessels believed to be carrying oil destined for Southern

⁸⁵ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/232 (16 December 1966), operative paragraph 7. In a number of subsequent decisions connected to the Southern Rhodesian sanctions régime, the Council again referred to Article 2(6) of the Charter and urged all States not Members of the United Nations to act in accordance with the sanctions against Southern Rhodesia. See, e.g.: S/RES/253 (29 May 1968), operative paragraph 14; S/RES/277 (18 March 1970), operative paragraph 18; S/RES/388 (6 April 1976), operative paragraph 3; S/RES/409 (27 May 1977), operative paragraph 2.

⁸⁶ As noted in section 4.1, above, the Council has often called upon “all States, including States non-members of the United Nations” to act strictly in accordance with sanctions, notwithstanding the existence of any prior legal obligation. In connection with the sanctions régime against Iraq, see: S/RES/661 (6 August 1991), operative paragraph 5. In connection with the sanctions régime against Libya, see: S/RES/748 (31 March 1992), operative paragraph 7; S/RES/883 (11 November 1993), operative paragraph 12. In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 11. In connection with the sanctions régime against Haiti, see: S/RES/841 (15 June 1993), operative paragraph 9; S/RES/917 (6 May 1994), operative paragraph 12. In connection with the Sudan sanctions régime, see: S/RES/1054 (26 April 1996), operative paragraph 5.

⁸⁷ See: S/RES/217 (20 November 1965), operative paragraphs 6 (calling upon all States not to recognize the illegal régime nor entertain diplomatic relation with it), 8 (calling upon all States to desist from providing the illegal régime with arms, equipment and military material, and to break off economic relations, including by imposing an embargo on oil and petroleum products).

Rhodesia, and empowered it to detain a tanker then docked at that port, in the event that it were to discharge its oil cargo there.⁸⁸ After the mandatory sanctions had been imposed, the Council also called upon the United Kingdom to undertake the following tasks: to give maximum assistance to the 253 Committee, providing it with any information received in order to make the sanctions fully effective;⁸⁹ and to rescind or withdraw any agreements on the basis of which foreign consular, trade and other representation might be maintained in or with Southern Rhodesia.⁹⁰

iv. States neighbouring or in the same region as the target

The Security Council has requested, called upon, or required States neighbouring or located in the region surrounding a target to take a range of additional action in connection with the implementation, monitoring or enforcement of sanctions. It has thus: authorized a neighbour State to take action to facilitate the implementation of a humanitarian programme designed to address the humanitarian consequences of sanctions;⁹¹ authorized riparian States to take action to enforce sanctions against a riparian target;⁹² requested riparian States to

⁸⁸ S/RES/221 (9 April 1966), operative paragraph 5.

⁸⁹ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 21. The Council reaffirmed that call in subsequent resolutions connected with the sanctions régime. See: S/RES/277 (18 March 1970), operative paragraph 22.

⁹⁰ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/277 (18 March 1970), operative paragraph 10.

⁹¹ In connection with the Iraq Oil-for-Food Programme, see: S/RES/986 (14 April 1995), operative paragraph 2 (authorizing Turkey to permit the import of petroleum and petroleum products from Iraq sufficient to meet the pipeline tariff charges for the transport of Iraqi petroleum and petroleum products through the Kirkuk-Yumurtalik pipeline).

⁹² In connection with the former Yugoslavia sanctions régime, see: S/RES/787 (16 November 1992), operative paragraph 13 (reaffirming the responsibility of riparian States to take the measures necessary to ensure that shipping along the Danube did not violate the embargo, including taking action to halt shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the embargo). The Council again reaffirmed that responsibility in S/RES/820 (17 April 1993), operative paragraph 17.

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/787 (16 November 1992), operative paragraph 13 (reaffirming the

monitor compliance by a riparian target with sanctions;⁹³ requested riparian States to take action domestically to ensure compliance with sanctions against a riparian target;⁹⁴ invited

responsibility of riparian States to take the measures necessary to ensure that shipping along the Danube did not violate the sanctions, including taking action to halt shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the sanctions). That responsibility was again reaffirmed in S/RES/820 (17 April 1993), operative paragraph 17.

In connection with the sanctions régime against the Bosnian Serbs, see: S/RES/820 (17 April 1993), operative paragraph 17 (reaffirming the responsibility of riparian States to take the measures necessary to ensure that shipping on the Danube did not violate the sanctions, including taking action to halt shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the sanctions).

⁹³ In connection with the former Yugoslavia sanctions régime, see: S/RES/820 (17 April 1993), operative paragraph 16 (calling upon riparian States to ensure that cabotage traffic along the Danube river between Vidin/Calafat and Mohacs was adequately monitored so that no vessels suspected of having violated the embargo were permitted to pass); S/RES/992 (11 May 1995), operative paragraph 3 (requesting the Government of Romania, with the assistance of the EU/OSCE Sanctions Assistance Missions, to monitor the use of Romanian locks while repairs were being carried out to locks on the Serbian side of the river, including if necessary by inspections of the vessels and their cargo, in order to ensure that no goods were loaded or unloaded during the passage by the vessels through the locks of the Iron Gates I system).

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/820 (17 April 1993), operative paragraph 16 (calling upon riparian States to ensure that cabotage traffic along the Danube river between Vidin/Calafat and Mohacs was adequately monitored so that no vessels suspected of having violated the sanctions were permitted to pass); S/RES/992 (11 May 1995), operative paragraph 3 (requesting the Government of Romania, with the assistance of the EU/OSCE Sanctions Assistance Missions, to monitor the use of Romanian locks while repairs were being carried out to locks on the Serbian side of the river, including if necessary by inspections of the vessels and their cargo, in order to ensure that no goods were loaded or unloaded during the passage by the vessels through the locks of the Iron Gates I system).

In connection with the sanctions régime against the Bosnian Serbs, see: S/RES/820 (17 April 1993), operative paragraph 16 (calling upon riparian States to ensure that cabotage traffic along the Danube river between Vidin/Calafat and Mohacs was adequately monitored so that no vessels suspected of having violated the sanctions were permitted to pass); S/RES/992 (11 May 1995), operative paragraph 3 (requesting the Government of Romania, with the assistance of the EU/OSCE Sanctions Assistance Missions, to monitor the use of Romanian locks while repairs were being carried out to locks on the Serbian side of the river, including if necessary by inspections of the vessels and their cargo, in order to ensure that no goods were loaded or unloaded during the passage by the vessels through the locks of the Iron Gates I system).

⁹⁴ In connection with the former Yugoslavia sanctions régime, see: S/RES/992 (11 May 1995), operative paragraph 4 (requesting Romania to deny passage through the locks on its bank of the Danube to any vessel suspected to have violated relevant Council resolutions, thus encompassing violations of the embargo).

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/992 (11 May 1995), operative paragraph 4 (requesting Romania to deny passage through the locks on its bank of the Danube to any vessel suspected to have violated sanctions).

States neighbouring a target to report to the relevant Sanctions Committee regarding efforts to implement sanctions;⁹⁵ called upon States neighbouring a target to take action domestically to enforce the sanctions;⁹⁶ urged States neighbouring a target to report to the relevant Sanctions Committee regarding alleged violations of sanctions;⁹⁷ called upon States neighbouring a target to cooperate with sanctions-related subsidiary bodies;⁹⁸ called upon States neighbouring a target to assist sanctions-monitoring activities;⁹⁹ urged States in the region surrounding a target to take action domestically to enforce sanctions;¹⁰⁰ called upon

In connection with the sanctions régime against the Bosnian Serbs, see: S/RES/992 (11 May 1995), operative paragraph 4 (requesting Romania to deny passage through the locks on its bank of the Danube to any vessel suspected to have violated sanctions).

⁹⁵ In connection with the Somalia sanctions régime, see: S/RES/1474 (8 April 2003), operative paragraph 10 (inviting States neighbouring Somalia to report to the 751 Committee on a quarterly basis regarding their efforts to implement the embargo).

⁹⁶ In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/820 (17 April 1993), operative paragraph 23 (requiring each State neighbouring the Federal Republic of Yugoslavia (Serbia-Montenegro) to prevent the passage of all freight vehicles and rolling stock into or out of that country, except at a strictly limited number of road and rail crossing points, the locations of which would be notified to the 724 Committee).

In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraph 27 (urging all States, including those geographically close to Angola, to take immediate steps to enforce, strengthen or enact legislation making it a criminal offence under domestic law for their nationals or other individuals operating on their territory to violate the sanctions, where they had not done so, and to inform the 864 Committee of the adoption of such measures, and inviting States to report the results of all related investigations or prosecutions to the 864 Committee).

In connection with the Rwanda sanctions régime, see: S/RES/997 (9 June 1995), operative paragraph 5 (calling upon States neighbouring Rwanda to take steps to ensure that arms and *matériel* were not transferred to Rwandan camps within their territories).

⁹⁷ In connection with the UNITA sanctions régime, see: S/RES/932 (30 June 1994), operative paragraph 8 (urging two States neighbouring Angola which had failed to respond substantively to requests from the 864 Committee for information regarding alleged sanctions violations to do so promptly).

⁹⁸ In connection with the Rwanda sanctions régime, see: S/RES/1011 (16 August 1995), operative paragraph 3 (calling upon the Governments of Rwanda and neighbouring States to cooperate with the investigations of the soon to be established International Commission of Inquiry).

⁹⁹ In connection with the Rwanda sanctions régime, see: S/RES/1011 (16 August 1995), operative paragraph 4 (calling upon neighbouring States to cooperate and assist with observers to be deployed at airfields and border crossing points to ensure that arms and related *matériel* were not transferred to Rwandan camps within their territories).

¹⁰⁰ In connection with the Rwanda sanctions régime, see: S/RES/1053 (23 April 1996), operative paragraph 5 (urging all States, and in particular those in the region, to intensify efforts to

States in the region surrounding a target to take action internationally to implement sanctions,¹⁰¹ and called on Member States of a regional organization to cooperate fully with a sanctions-related subsidiary body.¹⁰²

v. *Legitimate Governments in whose territories a target is located*

The Council has made additional requests of legitimate Governments in whose territories a target is located in connection with the sanctions régimes against UNITA, Rwanda and Sierra Leone. It has thus: called upon a legitimate Government to take effective domestic measures to ensure the implementation of sanctions,¹⁰³ required a legitimate Government to notify the relevant Sanctions Committee of imports made by it in accordance

prevent military training and the sale or supply of weapons to militia groups or former Rwandan government forces, and to take the steps necessary to ensure the effective implementation of the arms embargo, including by creating all necessary national mechanisms for implementation).

In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 4 (demanding that all States in the region take action to prevent armed individuals and groups from using their territory to launch attacks upon neighbouring countries). The Council reiterated that demand in: S/RES/1408 (6 May 2002), operative paragraph 4; S/RES/1478 (6 May 2003), operative paragraph 9.

¹⁰¹ In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1408 (6 May 2002), operative paragraph 4 (demanding that all States in the region cease providing military support to armed groups in neighbouring countries). The Council reiterated that demand in S/RES/1478 (6 May 2003), operative paragraph 9. Also in connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1343 (7 March 2001), operative paragraph 16 (urging all diamond exporting countries in West Africa to establish Certificate of Origin régimes for the trade in rough diamonds); S/RES/1478 (6 May 2003), operative paragraphs 4 (calling upon all States in the region, and in particular Liberia, to participate actively in all regional peace initiatives, particularly those of ECOWAS, the International Contact Group, the Mano River Union and the Rabat Process), 22 (calling upon States of the subregion to strengthen the measures they had taken to combat the spread of small arms and light weapons and mercenary activities and to improve the effectiveness of the ECOWAS Moratorium).

¹⁰² In connection with the sanctions régime against Liberia (in the second instance), see: S/RES/1478 (6 May 2003), operative paragraph 30 (calling on the Member States of ECOWAS to cooperate fully with the Panel of Experts on Liberia).

¹⁰³ In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraphs 14 (calling upon the Government of Angola to implement additional internal and inspection procedures with respect to the distribution of petroleum and petroleum products, for the purpose of enhancing the effectiveness of the sanctions, and inviting the Angolan Government to inform the 864 Committee of steps taken in that regard).

with permitted exemptions from sanctions,¹⁰⁴ and requested a legitimate Government to ensure that an effective certificate-of-origin régime for trade in diamonds was in operation in its territories, as well as to inform the relevant Sanctions Committee once such a régime was fully in operation.¹⁰⁵

vi. States alleged to have been violating sanctions

In connection with the Southern Rhodesian sanctions régime, the Council addressed particular requests to the United States, urging it to cooperate fully in the effective implementation of the sanctions,¹⁰⁶ considering that its decision to allow entry into its territories of Ian Smith and other members of the illegal régime in Southern Rhodesia was in contravention of the sanctions and thus of obligations under Article 25 of the Charter,¹⁰⁷ and calling upon it to observe the sanctions scrupulously.¹⁰⁸

vii. States playing a role connected with the objectives of a sanctions régime

In connection with the Libya sanctions régime, the Council called upon the Governments of the Netherlands and the United Kingdom to take the necessary steps to implement the initiative for the trial of two persons charged with the bombing of Pan Am

¹⁰⁴ In connection with the Rwanda sanctions régime, see: S/RES/1011 (16 August 1995), operative paragraph 11 (requiring the Government of Rwanda to mark and register and notify the Committee of all imports made by it of arms and related *matériel*).

¹⁰⁵ In connection with the Sierra Leone sanctions régime, see: S/RES/1306 (5 July 2000), operative paragraphs 2 (requesting the Government of Sierra Leone to ensure that an effective certificate-of-origin régime for trade in diamonds was in operation in Sierra Leone), 4 (requesting the Government of Sierra Leone to notify the 1132 Committee once an effective certificate-of-origin régime for trade in diamonds was fully in operation).

¹⁰⁶ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/320 (29 September 1972), operative paragraph 3.

¹⁰⁷ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/437 (10 October 1978), operative paragraph 2.

¹⁰⁸ In connection with the sanctions régime against Southern Rhodesia, see: S/RES/437 (10 October 1978), operative paragraph 3.

flight 103 before a Scottish court sitting in the Netherlands,¹⁰⁹ required Libya to ensure the appearance of the two accused and to ensure that any evidence or witnesses were made available at the court,¹¹⁰ and required the Netherlands, upon the arrival of the two accused, to detain them pending their transfer for the purpose of the trial.¹¹¹

viii. States engaging in relations that are exempt from sanctions

In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), the Council requested States from which flights or ferry services were permitted to travel to the Federal Republic of Yugoslavia (Serbia-Montenegro) to report to the 724 Committee on the controls adopted by them to ensure that the sanctions régime was not violated.¹¹²

ix. States engaging in a particular type of trade activity

In connection with the UNITA sanctions régime, the Council called upon Belgium to continue to cooperate with the 864 Committee to devise practical measures to limit access by UNITA to the legitimate diamond market, whilst also calling upon other States hosting diamond markets and States closely involved with the diamond industry to cooperate in the same manner with the 864 Committee.¹¹³ The Council also called upon “relevant States” to cooperate with the diamond industry to develop and implement more effective arrangements

¹⁰⁹ In connection with the Libya sanctions régime, see: S/RES/1192 (27 August 1998), operative paragraph 3.

¹¹⁰ In connection with the Libya sanctions régime, see: S/RES/1192 (27 August 1998), operative paragraph 4.

¹¹¹ In connection with the Libya sanctions régime, see: S/RES/1192 (27 August 1998), operative paragraph 7.

¹¹² In connection with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/988 (21 April 1995), operative paragraph 4.

¹¹³ In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraph 17.

to ensure that members of the diamond industry worldwide abided by the diamond sanctions, and to inform the 864 Committee of progress in that regard.¹¹⁴

10.2.3 Regional organizations

The Security Council has called upon regional organizations to play a role in the implementation, enforcement or monitoring of sanctions in respect of the sanctions régimes against the former Yugoslavia, Somalia, the Federal Republic of Yugoslavia (Serbia-Montenegro), the Bosnian Serbs, Haiti and Liberia (in the second instance).¹¹⁵

In the case of the sanctions régimes against the former Yugoslavia, the Federal Republic of Yugoslavia (Serbia-Montenegro) and the Bosnian Serbs, a number of regional arrangements or agencies played a part in the implement, monitoring and enforcement of sanctions.¹¹⁶ In November 1992, the Council invoked Chapters VII and VIII of the Charter in calling upon States, acting nationally or through regional agencies or arrangements, to use such measures as necessary to halt outward and inward maritime shipping in order to inspect and verify that cargo did not violate the arms embargo against the former Yugoslavia and the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro).¹¹⁷ In April 1993, when the Council strengthened the sanctions against the Federal Republic of

¹¹⁴ In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraph 19.

¹¹⁵ Although the Council welcomed the efforts being undertaken by the Economic Community of West African States (ECOWAS) and its Cease-Fire Monitoring Group (ECOMOG) to bring about peace in Liberia at the time that the first sanctions régime against Liberia was in place, it did not request either ECOWAS or ECOMOG to play a specific role in relation to the implementation, monitoring or enforcement of the sanctions.

¹¹⁶ For good summaries of the activities undertaken by regional organizations and other regional entities to implement and enforce the sanctions, see: S/1996/946 (15 November 1996), annex: *Final Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia*, paragraph 79; S/1996/776 (24 September 1996), annex: *Report of the Copenhagen Round Table on United Nations Sanctions in the Case of the Former Yugoslavia*, paragraphs 25-60.

¹¹⁷ S/RES/787 (16 November 1992), operative paragraph 12.

Yugoslavia (Serbia-Montenegro) and imposed sanctions against the Bosnian Serbs, it reaffirmed that the authority to States to take such action, acting nationally or through regional agencies or arrangements, applied also to action to enforce the strengthened sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) and the sanctions against the Bosnian Serbs.¹¹⁸

Acting under that delegated authority of the Council, a number of organizations took action to implement, monitor or enforce the sanctions régimes against the former Yugoslavia, the Federal Republic of Yugoslavia (Serbia-Montenegro) and the Bosnian Serbs. Among those organizations were: the European Community and its successor the European Union (the EC/EU);¹¹⁹ the Conference on Security and Cooperation in Europe and its successor the Organization for Security and Cooperation in Europe (the CSCE/OSCE);¹²⁰ the Western European Union (WEU) and the North Atlantic Treaty Organization (NATO).¹²¹

¹¹⁸ S/RES/820 (17 April 1993), operative paragraph 29.

¹¹⁹ The EC/EU played a major role in the implementation of sanctions by establishing a number of entities to facilitate such implementation. The details relating to these entities appear later in this paragraph and accompanying footnotes.

¹²⁰ Like the EC/EU, the CSCE/OSCE also played a major role in the implementation of sanctions by establishing a number of entities to facilitate such implementation. The details relating to these entities also appear later in this paragraph and accompanying footnotes.

¹²¹ The WEU and NATO patrolled the Adriatic Sea from July 1992 to June 1993 in order to ensure compliance by maritime traffic with the resolutions of the Security Council. From June 1993 the two organizations combined their efforts to form an operation entitled "Sharp Guard". By the time WEU and NATO concluded their activities to enforce the sanctions, in June 1996, the organizations had challenged over 70,000 vessels and inspected almost 6,000 at sea. For further details relating to these activities of the WEU and NATO, see: *Final Report of the 724 Committee*, above note 116, paragraph 79(b); *Report of the Copenhagen Round Table*, above note 116, paragraphs 48-50. For discussion of the extent to which WEU and NATO action in this regard could be viewed as having been authorized by the Security Council prior to the adoption of resolution 787 (1992) in November 1992, see the case-study on the former Yugoslavia sanctions régime in the Appendices.

In addition to its activities in the Adriatic Sea, the WEU also established a "Danube Mission", which commenced operations in June 1993, assisting Bulgaria, Hungary and Romania in their efforts to prevent violations of sanctions and ensure that shipping on the Danube was in accordance with the resolutions of the Security Council. For further details relating to the activities of the WEU Danube Mission, see: *Final Report of the 724 Committee*, above note

A number of those regional organizations also created subsidiary entities to facilitate resolution of the conflict in the former Yugoslavia in general or the implementation of sanctions in particular. The major entity established to address the conflict in the former Yugoslavia in general was the Conference on Yugoslavia (CY), which subsequently became the International Conference on the Former Yugoslavia (ICFY).¹²² Among the entities established with particular responsibilities for facilitating the implementation of sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) were: the EC/EU/CSCE/OSCE Sanctions Assistance Missions (SAMs);¹²³ the EC/EU/CSCE/OSCE Sanctions Coordinator;¹²⁴ and the European Commission/CSCE/OSCE Sanctions

116, paragraph 79(c); *Report of the Copenhagen Round Table*, above note 116, paragraphs 41-42.

¹²² The CY was established by the EC. In July 1992 the Security Council invited the EC, in cooperation with the Secretary-General, to examine the possibility of broadening the CY to provide it with "new momentum" in the search for a resolution to the conflict: S/24346 (24 July 1992); *Presidential Statement of 24 July 1992*. As a result, the ICFY was convened in London from 26 to 28 August 1992. The Conference adopted a Statement of Principles for a negotiated settlement of the problems of the former Yugoslavia. Subsequently, the ICFY was a key actor in facilitating the conclusion of the Vance-Owen peace plan and the Dayton Peace Agreement. For a summary of the CY/ICFY process, see *Report of the Copenhagen Round Table*, above note 116, paragraphs 25-27.

¹²³ The SAMs consisted largely of customs officers, who were deployed in States neighbouring the Federal Republic of Yugoslavia (Serbia-Montenegro) to help prevent violation of the sanctions. In April 1993, when it first established the sanctions against the Bosnian Serbs, the Council welcomed the role of the SAMs in support of the implementation of the sanctions and invited it to work in close cooperation with the 724 Committee: S/RES/820 (17 April 1993), operative paragraph 20. In September 1994, when it strengthened the sanctions, the Council further acknowledged the role being played by the SAMs in the implementation of the sanctions against the Bosnian Serbs by requiring States to prevent shipments of commodities and products destined for those areas under the control of Bosnian Serb forces from violating the sanctions by ensuring that they were physically inspected by the Sanctions Assistance Missions or by competent national authorities to verify and seal their contents: S/RES/942 (23 September 1994), operative paragraph 16. For further details relating to the work of the SAMs, see: *Final Report of the 724 Committee*, above note 116, paragraph 79(a); *Report of the Copenhagen Round Table*, above note 116, paragraphs 32-35.

¹²⁴ The position of the Sanctions Coordinator was established by the EC and the then CSCE in February 1993. The Sanctions Coordinator's mandate included: assessing sanctions implementation, as well as the effects of the sanctions; advising States on customs and legal matters; bringing violations to the attention of the CSCE/OSCE, the 724 Committee and concerned Governments; and consulting with Governments on the investigation and prosecution of alleged violations of the sanctions: S/25272 (10 February 1993) [containing the full mandate of the Sanctions Coordinator]. The Security Council welcomed the appointment of

Assistance Missions Communications Centre (SAMCOMM).¹²⁵ The ICFY also established a Mission charged with responsibility for monitoring the extent to which the Federal Republic of Yugoslavia (Serbia-Montenegro) was complying with its obligation to close its border with Bosnia and Herzegovina.¹²⁶

When the Security Council suspended the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro), it paid tribute to neighbouring States, the mission of the ICFY, the EU/OSCE Sanctions Coordinator, SAMCOMM, the SAMs, the WEU Operation on the Danube and the NATO/WEU Sharp Guard Operation on the Adriatic Sea, for their “significant contribution to the achievement of a negotiated peace.”¹²⁷ In its *Final Report*, the 724 Committee also noted that an important factor in the effectiveness of the sanctions régime against the former Yugoslavia, the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serbs, had been the role played by regional

the Sanctions Coordinator and invited him to work in close cooperation with the 724 Committee in S/RES/820 (17 April 1993), operative paragraph 20. For summaries of the Sanctions Coordinator’s activities, see: *Final Report of the 724 Committee*, above note 116, paragraph 79(a); *Report of the Copenhagen Round Table*, above note 116, paragraphs 36-38.

¹²⁵ SAMCOMM was established by the European Commission when it created the SAMs, in order to serve as a focal point for the exchange of information between the SAMs and the authorities of their host States. For summaries of SAMCOMM’s activities, see: *Final Report of the 724 Committee*, above note 116, paragraph 79(a); *Report of the Copenhagen Round Table*, above note 116, paragraphs 33-35.

¹²⁶ See, e.g., S/1994/1074 (19 September 1994), 1075 (19 September 1994) and 1076 (20 September 1994). The idea of establishing an observer mission along the border between the Federal Republic of Yugoslavia (Serbia-Montenegro) and Bosnia and Herzegovina had been raised sometime earlier in a letter dated 7 July 1993 from the President of the Security Council to the Secretary-General, in which the President of the Security Council invited the Secretary-General to contact Member States in order to establish whether they were prepared, individually or through regional organizations or arrangements to make personnel available to act as observers along the borders of Bosnia and Herzegovina: S/26049 (7 July 1993): *Letter dated 7 July 1993 from the President of the Security Council addressed to the Secretary-General*.

¹²⁷ S/RES/1022 (22 November 1995), operative paragraph 9.

organizations in assisting national authorities and the Committee itself to monitor and enforce the sanctions.¹²⁸

In the case of the sanctions régime against Somalia, the Council called upon regional organizations, and in particular the African Union (AU) and the League of Arab States (LAS), to assist the Somali parties and States in the region to implement the arms embargo fully.¹²⁹

In connection with the Haiti sanctions régime, in October 1993 the Security Council invoked both Chapters VII and VIII of the Charter of the United Nations,¹³⁰ and called upon Member States, acting nationally or through regional agencies or arrangements, and cooperating with the legitimate Government of Haiti, to use such measures as necessary under its authority to ensure the strict implementation of the sanctions, including halting inbound maritime shipping in order to inspect and verify that their cargoes did not violate the sanctions.¹³¹ In May 1994 the Council strengthened that authorisation by calling upon those same actors to use such measures as necessary to ensure the strict implementation of the sanctions and in particular to halt outward as well as inward maritime shipping in order to inspect and verify their cargoes and destination to ensure that they were not in violation of the sanctions.¹³²

In connection with the sanctions régime against Liberia (in the second instance), the Security Council has invited ECOWAS to report regularly to the 1343 Committee on

¹²⁸ *Final Report of the 724 Committee*, above note 116, paragraph 79.

¹²⁹ S/RES/1474 (8 April 2003), operative paragraph 11.

¹³⁰ S/RES/875 (16 October 1993), preambular paragraph 8.

¹³¹ S/RES/875 (16 October 1993), operative paragraph 1.

¹³² S/RES/917 (6 May 1994), operative paragraph 10.

activities taken by its members to implement the sanctions¹³³ and to implement the ECOWAS Moratorium on small arms and light weapons.¹³⁴ The Council has also called upon States of the subregion to improve the effectiveness of the ECOWAS Moratorium,¹³⁵ and called on the Member States of ECOWAS to cooperate fully with the Panel of Experts on Liberia.¹³⁶

¹³³ S/RES/1408 (6 May 2002), operative paragraph 12; S/RES/1478 (6 May 2003), operative paragraph 21.

¹³⁴ S/RES/1478 (6 May 2003), operative paragraph 21.

¹³⁵ S/RES/1478 (6 May 2003), operative paragraph 22.

¹³⁶ S/RES/1478 (6 May 2003), operative paragraph 30.

PART IV: STRENGTHENING THE RULE OF LAW: A CONSTRUCTIVE CRITIQUE OF U.N. SANCTIONS

Part IV applies the theoretical framework developed in Part I to the U.N. sanctions system described in Parts II and III. Chapter 11 scrutinises the relationship between the U.N. sanctions system and the rule of law, critically evaluating the extent to which sanctions have strengthened the rule of law. It concludes that the U.N. sanctions system exhibits shortcomings in respect of each of the key elements of the rule of law and outlines recommendations designed to address those shortcomings. Chapter 12 contains concluding remarks and recapitulates the key policy proposals designed to ensure that U.N. sanctions respect, promote and reinforce the rule of law.

11. *Strengthening the rule of law or serving as a tool of war? A critical analysis of U.N. sanctions*

This Chapter operationalises the theoretical framework constructed earlier, measuring the U.N. sanctions system's performance against the model of the rule of law developed in Chapter 2. Analysis is divided into five sections, each of which is devoted to one of the basic elements of that model: transparency, consistency, equality, due process and proportionality. Within each section, discussion critically evaluates the Council's track-record, before proposing how the Council's practice might be improved so that it better strengthens the overall rule of law.

11.1 Behind closed doors: U.N. sanctions and the problem of transparency

As noted in Chapter 2, the principle of transparency requires that in the exercise of power, decision-making should be open and transparent. Thus the reasoning leading to a particular decision should be clear to those affected by the ultimate decision, as well as to the broader public. Moreover, it should be clear that the relevant power is being exercised in accordance with legitimate authority. In the context of U.N. sanctions, transparency requires that the Security Council's decision-making process is open and transparent. Ideally, the Council's deliberations leading to the adoption of sanctions-related decisions should be a matter of public record and it should be clear from the decisions themselves that they are taken in accordance with legitimate authority.

The Council's track-record in this area has been less than impressive. Despite some laudable initiatives to improve transparency,¹ key consultations leading to the adoption of sanctions-related decisions too often occur behind closed doors. Moreover, the decisions themselves rarely provide a transparent picture of the justification for a particular decision or a clear picture of its objectives. The discussion below is divided into four parts. The first part explores the question of transparency in the Security Council's decision-making process. The second part explores the question of transparency in the Council's decisions themselves. The third part considers the transparency of the decision-making process in the Council's Sanctions Committees. Finally, the fourth part provides suggestions for improving the transparency of the Council's decision-making process.

11.1.1 Transparency in the Security Council's decision-making process

In the Security Council's early days it was not uncommon for delegates to engage in lengthy debates on the pros and cons of a proposed decision.² The official records of the Council's early formal meetings reveal many an extended discussion about draft resolutions, with deliberations sometimes ranging over multiple meetings as diplomats considered competing proposals for provisions within a particular draft resolution. Draft resolutions were sometimes debated so extensively that they would go through numerous incarnations before reaching their final form. While informal, behind the scenes negotiations would likely have been taking place at the same time, the substance of which was inaccessible to the

¹ See: Hulton, Susan C., 'Council Working Methods and Procedure', in: Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004) Lynne Rienner, Boulder, CO, 237-51, especially 245-7.

² For examples of such debates, see: *Repertoire of the Practice of the Security Council, Supplement for 1946-51*, Chapter VIII.

public, it is illuminating to read the considered arguments put forth by various delegations in relation to proposed Council action.

At a certain point in time, it appears that Security Council members began to feel constrained by the responsibility of having to negotiate in the public eye. Increasingly, substantive discussions began to occur in private. There were good reasons for this development, as in theory diplomats would be at greater leisure to discuss the political motivations underpinning their positions and thus to debate more honestly and openly how to achieve a consensus or compromise approach. In time this informal approach to decision-making was institutionalised, as the Security Council introduced the practice of holding “informal consultations”. In 1978 a purpose-built room was constructed to house such consultations.³

Informal consultations have since become an integral part of Security Council life, with the bulk of the Council’s business conducted in the consultations room rather than in the formal Security Council chamber. The consultations have remained a private affair, with no official records kept and attendance tightly controlled. Despite the impressive ability of U.N.-accredited journalists to report on developments rumoured to have happened in consultations, such discussions unfold beyond the public eye. Since the introduction of consultations, much of the contentious discussion relating to draft resolutions, which might otherwise have featured in the Council’s formal meetings, has instead taken place behind closed doors. A comparison of the records of the Council’s early formal meetings and those in recent years reveals that the practice of publicly debating the pros and cons of draft

³ Bailey, Sydney D. & Daws, Sam, *The Procedure of the UN Security Council* (3rd ed. 1998) Clarendon Press, Oxford, 62.

resolutions and their provisions has become virtually extinct. Instead, draft resolutions are rarely tabled for discussion in formal meetings until the members of the Council are prepared to vote on them, thus meaning that the outcome of the voting is practically pre-determined. There may be a brief recapitulation of national positions with respect to the draft resolution about to be put to the vote, but the public records of contemporary Council meetings provide precious little evidence to indicate how the Council's decision-making process unfolds. The Council sometimes adopts decisions with no discussion at all, thus leaving no public record of the discussions leading to or the reasoning underlying those decisions. The Council's recent sanctions practice illustrates this point strikingly, as its decisions establishing the four most recent sanctions régimes were each adopted without any statement being made by any Council members.⁴

This is not to say that the Security Council does not discuss important issues publicly. A number of thematic issues have been inscribed on the Council's agenda, often at the prerogative of the President of the Security Council. Thematic debates have thus been held on issues related to the Security Council's work, such as: children and armed conflict;⁵ women, peace and security;⁶ Africa's food crisis as a threat to peace and security;⁷ and

⁴ See: S/PV.4144 (17 May 2000) (when the Council adopted resolution 1298 (2000), imposing sanctions against Ethiopia and Eritrea, without any discussion at all); S/PV.4287 (7 March 2001) (when the Council established the second Liberia sanctions régime, again without any discussion); S/PV.4797 (28 July 2003) (when the Council established the DRC sanctions régime, with only the Secretary-General making a statement); S/PV.4890 (22 December 2003) (when the Council established the third Liberia sanctions régime, again without any discussion).

⁵ See: S/PV.3896 (29 June 1998); S/PV.3897 (29 June 1998); S/PV.4037 (25 August 1999); S/PV.4167 (26 July 2000); S/PV.4185 (11 August 2000); S/PV.4422 (20 November 2001); S/PV.4423 (20 November 2001); S/PV.4528 (7 May 2002); S/PV.4684 (14 January 2003); S/PV.4695 (30 January 2003).

⁶ See: S/PV.4208 (24 October 2000); S/PV.4213 (31 October 2000); S/PV.4402 (31 October 2001); S/PV.4635 (28 October 2002); S/PV.4641 (31 October 2002).

⁷ See: S/PV.4652 (3 December 2002); S/PV.4736 (7 April 2003).

justice and the rule of law.⁸ Such discussions have taken place in public meetings of the Council, often with the broad participation of the wider U.N. membership. Moreover, under Article 35 of the Charter and rule 3 of the provisional rules of procedure of the Security Council, U.N. Member States can request that the Security Council be convened to discuss an urgent matter threatening international peace and security.⁹ Such meetings usually take place in public too, generally with the participation of the broader U.N. membership.¹⁰

These discussions on thematic agenda items and pressing events relating to the maintenance of peace and security provide a good opportunity to ascertain the views of the members of the Security Council, as well as those of the wider U.N. membership. By scrutinising the records of these meetings, useful insights can be gained into how the Council's members and the U.N.'s members at large view the Council's track-record in fulfilling its responsibilities for the maintenance of international peace and security. Nevertheless, frank and insightful public debate with respect to thematic agenda items and pressing issues of international peace and security can only go so far towards offsetting the transparency deficit caused by the absence of a meaningful public record of much of the Council's decision-making process. Until the Security Council's discussions on the potential implications of proposed decisions become a matter of public record, the Council will be vulnerable to the allegation that its decision-making process lacks transparency.

⁸ See: S/PV.4833 (24 September 2003); S/PV.4835 (30 September 2003).

⁹ Article 35, paragraph 1 reads: "Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly." Rule 3 of the Security Council's provisional rules of procedure reads: "The President shall call a meeting of the Security Council if a dispute or situation is brought to the attention of the Security Council under Article 35 ... of the Charter ...".

¹⁰ For a recent example of a meeting called in response to the request of a State not a member of the Security Council, see S/PV.4972 (19 May 2004). For the request itself, which was made by Yemen in connection with the Palestinian Question, see: S/2004/393 (17 May 2004).

It is sometimes necessary for the Security Council to conduct business in private. In certain situations the ability to discuss national positions frankly and honestly behind closed doors can facilitate a compromise or consensus outcome. In addition, the ability to function in private and at the ambassadorial or expert level can facilitate efficiency, thus making an increasingly burdened agenda more manageable.¹¹ Nevertheless, where possible the Security Council should seek to ensure that the practice of shielding discussions from the public eye is the exception rather than the norm. Compromise and consensus are important, but they should not be achieved at the expense of transparency. An overburdened Security Council agenda requires creative management, but it is no justification for failing to provide full transparency. There is no intrinsic reason why the majority of the Council's proceedings should not be a matter of public record. Respecting the principle of transparency does not require the full participation of all U.N. Member States in the Security Council decision-making process. However, as most Council decisions have profound and far-reaching consequences for U.N. Member States, due to the manner in which those States are legally bound under Article 25 of the Charter to observe such decisions, the broader U.N. membership should be entitled to expect that most of the Council's deliberations will either take place in open session or subsequently become a matter of public record.

¹¹ Potential Security Council decisions are often threshed out at the level of experts rather than at the level of Ambassadors. The informal process for developing draft resolutions often proceeds through multiple stages of fluid negotiation. A draft is generally initiated by a sponsor or group of sponsors, before being opened up to discussion by the experts of all members of the Council. Once discussed at the expert level, the draft will be taken up by the Security Council itself during informal consultations. Finally, when the draft's sponsor is ready to put the draft to the vote, a formal meeting of the Council is called and a vote held.

11.1.2 Transparency in Security Council decisions

The less than impressive transparency of the Security Council's decision-making process makes it all the more important that the decisions themselves should provide a clear roadmap of their underlying justification, rationale and objectives. In the context of U.N. sanctions, it should be evident from the Council's sanctions-related decisions that the Council is exercising its sanctions powers in accordance with legitimate authority. In order to demonstrate that its sanctions powers are being exercised in accordance with legitimate authority, as prescribed in the United Nations Charter, in its sanctions-related decisions the Council should make a determination under Article 39 of the Charter of the existence or continuance of a threat to the peace, breach of the peace or act of aggression. It should also state clearly that it is acting upon its sanctions powers, as provided in Article 41 of the Charter, in order to maintain or restore international peace and security. Moreover, the Council should illustrate its commitment to acting faithfully in accordance with its legitimate powers by outlining clear, attainable and verifiable sanctions objectives, the achievement of which will resolve the threat, breach or act and thus maintain or restore peace and security.

i. Transparency and the determination of threats to the peace

As noted in Chapter 6, although the Security Council has generally determined the existence of a breach of or threat to the peace before applying sanctions, on two occasions it has applied sanctions without making the requisite determination of a threat to or breach of the peace or act of aggression.¹² While it is arguable that the Council's application of sanctions under Chapter VII in those instances suggested an implicit determination of a threat to the peace, the fact that no explicit determination was made casts doubt upon the

transparency of the Council's decision-making in those particular instances. Another troublesome aspect of the Council's practice with respect to determining the existence of threats to the peace is that the Council has not always stated clearly and precisely the character of the threat in a given situation. As noted in Chapter 6, the Council usually paints a background picture of a situation in its resolution's preambular paragraphs, before simply determining that a threat to the peace exists. Thus it is left to the reader to deduce from the various circumstances noted in the preambular paragraphs what might be said to constitute the requisite threat. This approach is particularly problematic from the perspective of transparency, as in theory it should be possible to identify from the Council's sanctions-related decisions which of the various background circumstances were critical in leading the Council to determine the existence of a threat. Once it is clear precisely where the threat lies, it should be apparent how the existing circumstances must change in order to eradicate the threat and maintain or restore international peace and security.

But perhaps the most problematic aspect of the Council's practice from the point of view of transparency is the fact that the wide discretion accorded to the Council in determining the existence of threats to the peace renders the concept susceptible to multiple interpretations, increasing the potential for abuse. On occasion, the argument has been made that the Council's interpretation of a threat to the peace has served as a convenient pretext to take coercive action against an actor that serves primarily the self-serving political agenda of certain powerful members of the Council rather than constituting a sincere attempt to combat a genuine threat to international peace and security. The most prominent case in

¹² See Chapter 6, section 6.1.1.

point is that of the determination of a threat to the peace in the case of the sanctions régime imposed against Libya.

As noted in Chapter 6, in the Libyan instance the Council affirmed that terrorism was a threat to international peace and security and determined that Libya's failure to cooperate adequately with investigations into the Pan Am and UTA terrorist bombings, which had implicated the involvement of Libyan officials, constituted a threat to the peace.¹³ In early 1992, the Security Council's determination that terrorism threatened the peace broke new ground. Nevertheless, the fact that such a determination was not disputed in the Council's discussions on Libya suggests both that it was not controversial and that the time was ripe for the Council to break such new ground.¹⁴ In that respect, the Council appeared to be acting transparently in accordance with its primary responsibility for the maintenance of international peace and security by asserting that it could use its Chapter VII powers to address the threat of terrorism. More controversial, however, was the Council's characterisation that Libya's failure to cooperate fully with efforts to investigate terrorist acts amounted to a threat to the peace.

On one hand, the United States, the United Kingdom, France and other States supporting the application of sanctions against Libya, stressed that terrorism constituted a threat to international peace and security and argued that the Council had a responsibility to

¹³ See Chapter 6, section 6.1.2.

¹⁴ For statements to the effect that terrorism constituted a threat to the peace made by countries advocating the application of sanctions against Libya, see note 15, below. Among the countries which did not subscribe to the view that the Council should employ Chapter VII action against Libya, there was nevertheless strong condemnation of terrorism. See, e.g.: S/PV.3033 (21 January 1992): statement by Libya, pp. 18-20; S/PV.3063 (31 March 1992), statements by: Libya, p. 12; Jordan, p. 28; Mauritania, p. 31 (on behalf of the States members of the Arab Maghreb Union – Algeria, Libya, Mauritania, Morocco and Tunisia); Iraq, p. 37; Uganda, pp. 39-40; Mr. Ansar, representative of the Organization of the Islamic Conference, p. 42; Cape Verde, p. 45; Zimbabwe, pp. 49-50; India, p. 56; and China, p. 59.

act against such a threat.¹⁵ They contended that, in order to deter States from sponsoring future acts of international terrorism, the Council must act firmly against any State whose officials were implicated in acts of international terrorism.¹⁶ The Council had provided Libya with an opportunity to cooperate with efforts to bring to justice those responsible for the terrorist bombings of the Pan Am and UTA flights, but Libya had failed to take advantage of that opportunity.¹⁷ In that context, Libya's failure to comply fully with the Council's requests itself amounted to a threat to the peace, thus warranting the application of sanctions under Chapter VII of the Charter.¹⁸ This interpretation of the situation was essentially the one that carried the day, as illustrated by the Council's adoption of resolution 748 (1992), reflecting that position.

By contrast, Libya and other countries advocating against Chapter VII action portrayed events in a completely different light. These countries, while acknowledging that terrorism posed a threat to international peace and security,¹⁹ nevertheless argued that in the Libyan case there was no immediate threat justifying action under Chapter VII. Pointing to observations made by Secretary-General Boutros-Boutros Ghali, to the effect that there had

¹⁵ S/PV.3063 (31 March 1992), statements by: Ecuador, p. 48; the United Kingdom, p. 72; France, p. 73; Hungary, p. 76; Austria, p. 77; the Russian Federation, pp. 79-80; Belgium, p. 81; and Venezuela, p. 82.

¹⁶ S/PV.3063 (31 March 1992): the United Kingdom, p. 72 ("If terrorists gain the upper hand, the rule of law and international peace and security are directly endangered. By adopting this resolution the Security Council has acted in full conformity with its primary responsibility for the maintenance of international peace and security").

¹⁷ S/PV.3063 (31 March 1992): the United Kingdom, p. 69 ("Regrettably, it now seems clear – from the reports of the Secretary-General, from the outcome of the Arab Ministers' mission and from recent statements by the Libyan authorities – that, without further action by this Council, Libya has no intention of complying with resolution 731 (1992)"); Hungary, p. 76 ("we are compelled to note that, although over two months have passed since the adoption of Security Council resolution 731 (1992), Libya has yet to comply with its provisions").

¹⁸ S/PV.3063 (31 March 1992): the United States, p. 66 (observing that "the evidence revealing Libya's involvement in these acts of terrorism indicates a serious breach of international peace and security", thus fully justifying the adoption of Chapter VII measures).

¹⁹ See note 14, above.

been an evolution in Libya's approach to the investigations,²⁰ they argued that Libya had taken significant steps to comply with the Council's requests to cooperate with investigations and to renounce terrorism.²¹ Moreover, some of them maintained that the situation under consideration was essentially a legal dispute, consisting of a disagreement between Libya, on the one hand, and France, the United Kingdom and the United States, on the other, regarding how to proceed with investigations into the bombings and how to bring those responsible for the bombings to justice.²² As the dispute was legal in nature, it should be resolved via legal means. The Security Council's proper role should therefore be to encourage the dispute's resolution via peaceful means under Chapter VI of the United Nations Charter, and in particular under Articles 33 and 36.²³ Libya had demonstrated its

²⁰ The Secretary-General's comments were outlined in: S/23672 (3 March 1992): *Report of the Secretary-General submitted pursuant to paragraph 4 of Security Council resolution 731 (1992)*, paragraph 6 (noting that there had been "a certain evolution" in Libya's position and observing that the Council might wish to consider that fact in deciding its future course of action). For statements picking up on the Secretary-General's observation, see S/PV.3063 (31 March 1992): Libya, pp. 17-18; Mauritania, p. 32; Iraq, p. 37; Zimbabwe, p. 51; India, pp. 56-7.

²¹ The representative of Libya outlined at length the steps which, in Libya's view, had demonstrated its cooperation with the investigations and the Council's requests made in resolution 731 (1992). See: S/PV.3033 (21 January 1992), pp. 8-11; S/PV.3063 (31 March 1992), pp. 5-6, 9-12. For other statements also arguing that Libya had endeavoured to comply with the Council's requests, see: S/PV.3063 (31 March 1992): Mauritania, p. 32; and Mr. Ansary, representative of the OIC, p. 43.

²² S/PV.3033 (21 January 1992): Libya, p. 12 (arguing that the matter was "a legal issue" concerning a conflict of jurisdiction – "a dispute over the legal determination to be made in connection with a request for extradition"); S/PV.3063 (31 March 1992): Libya, pp. 6-7, 18-20; Mauritania, p. 32 (observing that the dispute was "basically juridical in nature").

²³ S/PV.3063 (31 March 1992): Libya, pp. 7, 18; Jordan, pp. 26-7; Morocco, p. 64.

Article 33 of the Charter reads as follows:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 36 of the Charter reads as follows:

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

willingness to resolve the dispute peacefully by referring it to the International Court of Justice (ICJ), in accordance with Article 14 of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.²⁴ Thus, as the potential still existed to resolve the dispute peacefully, it was premature for the Council to proceed to take Chapter VII action.²⁵ Some countries warned against hasty action that might aggravate the situation.²⁶ Libya itself went so far as to imply that if there was a threat to the peace, then it was posed by those States that were pressing for Chapter VII action.²⁷

The Libyan case illustrates how the Council's motives for determining a threat to the peace can easily be called into question. This can be attributed partly to the vague and

-
2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.
 3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

²⁴ S/PV.3063 (31 March 1992): Libya, p. 13; Mauritania, p. 32; Iraq, p. 37; Uganda, pp. 39-40; Cape Verde, p. 46. Article 14 of the Montreal Convention reads as follows: "Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the ICJ by request in conformity with the Statute of the Court".

²⁵ S/PV.3063 (31 March 1992): Jordan, pp. 29-30; Iraq, pp. 34-5; Cape Verde, pp. 46-7; Zimbabwe, p. 52; India, pp. 57-8; Morocco, p. 64.

²⁶ S/PV.3063 (31 March 1992): Mr. Ansay, representative of the OIC, p. 44 (warning that the imposition of sanctions would "unfortunately and uselessly increase tension among members of the international community"); Zimbabwe, p. 53 ("By taking the Chapter VII route while this case is still pending before the world Court, the Security Council is risking a major institutional crisis. Such a crisis, which is clearly avoidable, would not only undermine the prestige, credibility and integrity of the entire Organization but would also sap international confidence in the Security Council's capacity to execute, in a judicious and objective manner, its mandate as provided for in the Charter"); China, p. 61 (noting that in principle China did not support the Council imposing sanctions against Libya, because they would complicate the issue, aggravating regional tension and posing serious economic consequences for the countries in the region).

²⁷ S/PV.3033 (21 January 1992): Libya, p. 23 (arguing that it had never threatened any country and contending that it was in fact being threatened by "super-Powers"); S/PV.3063 (31 March 1992): Libya, pp. 19-20 (arguing that it was being threatened and should invoke Chapter VII, not the United States, the United Kingdom or France, which had invoked that Chapter "merely because two people, who have yet to be proven guilty, have been indicted").

general nature of the concept of a threat to the peace. In order to demonstrate that its actions are taken in accordance with legitimate authority, the Council should articulate clearly the precise conditions that amount to a threat to the peace in a given instance. In the Libyan case, the Council might have specified more precisely how the situation threatened the peace, thus compelling urgent coercive action against Libya. In the absence of a clear and transparent articulation of the requisite threat, questions will arise concerning the legitimacy of a Security Council decision to act under Chapter VII. The Libyan instance begs a number of such questions. Why was there such an urgent need to act when Libya did not appear to pose an immediate danger to other States or the international community? Given the Secretary-General's observation that there had been an evolution in Libya's cooperation, might the Council not have continued to pursue other avenues to elicit the cooperation it sought from Libya? Why did the Council not establish its own fact-finding team to verify the claims of the American, British and French investigating teams, before proceeding to employ coercive measures against a Member State? Why did the Council rush to impose Chapter VII measures rather than awaiting the outcome of the International Court of Justice's deliberations on the matter?

The Council's failure to be completely transparent in determining a threat in the Libyan case raised doubts concerning its motives and undermined the contention made by those calling for Chapter VII measures that it was acting to reinforce the rule of law.²⁸ Thus

²⁸ The representative of the United States argued that a firm response by the Council under Chapter VII was the surest guarantee that the Security Council, using its specific powers under the Charter, would preserve the rule of law and ensure the peaceful resolution of threats to international peace and security: S/PV.3063 (31 March 1992): p. 67. The representative of the United Kingdom argued that, if terrorists gained the upper hand, then the rule of law and international peace and security would be directly endangered. Thus by acting under Chapter VII to adopt resolution 748 (1992), the Council was acting in full conformity with its primary responsibility for the maintenance of international peace and security. Moreover, Libya's

it unwittingly lent credibility to the claim that it was missing an opportunity to uphold the rule of law by failing to encourage the parties to the conflict to submit their dispute to resolution before the International Court of Justice.²⁹ While the need to deter future acts of terrorism is both genuine and pressing, that need must be carefully balanced against the potential damage that might be caused to the Council's credibility as the guardian of international peace and security if there is a perception that it has used its Chapter VII powers unnecessarily. In the Libyan case, it is hard to avoid the suspicion that, in the eyes of certain permanent members of the Security Council, the real threat to international peace and security lay in the possibility that the International Court of Justice might pass judgment on the matter in a way that would undermine the flexibility of the Security Council to act on the matter.³⁰ By acting

efforts to have the dispute referred to the ICJ effectively amounted to an attempt to subvert the rule of law by interfering with the Council's responsibility to maintain international peace and security: S/PV.3063 (31 March 1992): p. 72. The representative of France contended that, in the absence of any response from the Tripoli Government, the course chosen by France, the United Kingdom and the United States had been that based on the rule of law – namely to bring the dispute before the Security Council: S/PV.3063 (31 March 1992): p. 73.

²⁹ See, e.g., S/PV.3063 (31 March 1992), statements by: Libya, p. 22 (expressing the hope that the Council would ensure respect for the principles of the Charter and of international law, thus strengthening international peace and security and promoting justice and fairness); Zimbabwe, p. 53 (expressing the view that by taking the Chapter VII route while the case was still pending before the ICJ, the Council was risking a major institutional crisis which was avoidable and which would undermine the credibility of the United Nations, noting that it attached great importance to the rule of law in relations between States and believed that, as the body entrusted with primary responsibility for the maintenance of international peace and security, the Security Council should attach due importance to international law, and concluding that the Council's deliberations could have benefited from the ICJ's pronouncement); India, p. 58 (observing that the considered opinion of the ICJ on the legal aspects of the issues involved could only serve the interests of international law and peace, noting that a small delay would have thus merited positive consideration, and arguing that it should be feasible for those two principal organs of the United Nations to function in tandem so as to reinforce each other's efficacy and prestige in the cause of international peace and security).

³⁰ The statement by the representative of the United Kingdom appears to confirm this suspicion. See: S/PV.3063 (31 March 1992), pp. 68-9 ("[W]e believe that Libya's application, while purporting to enjoin action by the United Kingdom against Libya, is in fact directed at interfering with the exercise by the Security Council of its rightful prerogatives under the United Nations Charter. We consider that the Security Council is fully entitled to concern itself with issues of terrorism and the measures needed to address acts of terrorism in any particular case or to prevent it in the future. Any other view would undermine the primary responsibility for the maintenance of international peace and security conferred on the Council by Article 24

against Libya under Chapter VII, the Council was perhaps responding less to a genuine threat to peace and security than to a threat to its own discretion.

ii. Transparency and invoking the Charter basis for applying sanctions

As noted in Chapter 6, the Security Council has routinely invoked Chapter VII when applying or modifying sanctions.³¹ At the same time, it has rarely stipulated that it is acting under Article 41 of the Charter, which is the only specific basis within Chapter VII for the application of sanctions.³² It is unclear why the Council has not invoked Article 41 on a more regular basis. In other situations, where for example the Council is seeking to exercise its powers to authorize the use of force in a manner that might not have been expressly envisaged by the U.N.'s founders, it is understandable that the Council might wish to locate the basis of such action in Chapter VII in general rather than in a specific Charter provision.³³ But with respect to decisions to apply or modify sanctions régimes, the

of the Charter. It would thus seriously weaken the Council's ability to maintain peace and security in future circumstances which are unforeseen and unforeseeable").

³¹ See also Table B.

³² Explicit invocations of Article 41 have been few and far between, with the Council only referring to that provision as the basis for the application of sanctions on a handful of occasions. The Council did make rare explicit references to Article 41 in resolutions connected with the sanctions régimes against Southern Rhodesia and UNITA. In connection with the Southern Rhodesia sanctions régime, see: S/RES/232 (16 December 1966), preambular paragraph 4 ("Acting in accordance with Articles 39 and 41 of the Charter"); S/RES/253 (29 May 1968), operative paragraph 9 (requesting all States Members of the United Nations or of the specialized agencies to take "all possible further action under Article 41 of the Charter" to deal with the situation in Southern Rhodesia); S/RES/277 (18 March 1970), operative paragraphs 9 (deciding to apply additional sanctions, "in accordance with Article 41 of the Charter") 11 (requesting all States Members of the United Nations or of the specialized agencies to take "all possible further action under Article 41 of the Charter" to deal with the situation in Southern Rhodesia); and S/RES/409 (27 May 1977), operative paragraph 3 (deciding that the 253 Committee would report to the Council on the possible application of further measures under Article 41). In connection with the UNITA sanctions régime, see: S/RES/1295 (18 April 2000), operative paragraph 6 (undertaking to consider by a certain date the application of additional measures against UNITA "under Article 41 of the Charter").

³³ See, for example, the Security Council's authorisation of the use of all necessary means in the case of Iraq: S/RES/678 (29 November 1990), operative paragraph 2 (authorizing Member States cooperating with the Government of Kuwait to use all necessary means to uphold resolution

constitutional basis is so clearly and uncontroversially located in Article 41 that a general reference to Chapter VII does not provide any meaningful additional flexibility or strengthen the Council's hand in terms of the implementation of sanctions. There is little reason for the Council to avoid invoking the Charter's sanctions provision in its sanctions-related decisions. Its failure to do so – for no readily apparent rationale – needlessly calls into question its desire to operate in a transparent manner.

iii. Transparency and the articulation of sanctions objectives

Closely connected to the problem of a lack of clarity and transparency in the Council's determinations of threats to the peace is the inadequate articulation of the objectives for which sanctions are applied. The survey of the Council's practice in this area contained in Chapter 6 reveals both some good precedents for the articulation of specific, objectively verifiable goals, as well as some troubling examples of objectives that have been so general or vague that it is arguable that they could only elude objective verification. Among the positive precedents,³⁴ the third Liberia sanctions régime illustrates elements of best-practice, as it incorporates goals that are both objectively verifiable and tied to particular components of the sanctions régime.³⁵ Among the less positive examples,

660 (1990) and subsequent related resolutions if Iraq did not fully implement those resolutions on or before 15 January 1991).

³⁴ Relatively transparent objectives have been outlined in connection with the sanctions régimes against the Federal Republic of Yugoslavia (Serbia-Montenegro), the Bosnian Serbs, Haiti, UNITA, Sierra Leone, Kosovo, Ethiopia and Eritrea, Liberia (on the second occasion), the DRC, and Liberia (on the third occasion).

³⁵ As noted above in the overview of the Council's many and varied sanctions régimes, the Council imposed a mixture of arms, travel, diamond and timber sanctions against Liberia as part of the third Liberia sanctions régime. The objectives of the arms and travel sanctions were to ensure that: (a) the Liberian ceasefire was being fully respected and maintained; (b) the disarmament, demobilization, reintegration, repatriation and restructuring of the security sector had been completed; (c) the provisions of the Comprehensive Peace Agreement were being fully implemented; and (d) significant progress had been made in establishing and maintaining stability in Liberia and the subregion: S/RES/1521 (22 December 2003), operative paragraph 5.

however, the Security Council has on one occasion failed to identify any explicit objective at all.³⁶ On other occasions, the Council has articulated goals that are general, vague or difficult to verify or satisfy, such as: establishing peace and stability; securing the future, ongoing disarmament of a target; and ensuring that a target ceases supporting terrorism.

(a) *Establishing peace and stability*

The Council incorporated the general objective of establishing peace and stability as part of its sanctions régimes against the former Yugoslavia,³⁷ Somalia,³⁸ Liberia (in the first instance),³⁹ and the Federal Republic of Yugoslavia (to address the situation in Kosovo).⁴⁰ In the former Yugoslavia and Kosovo cases, this objective was augmented by more specific objectives.⁴¹ In the Somalia and Liberia régimes, however, the Council simply noted that the

The objective of the diamond sanctions was to secure the establishment of an effective Certificate of Origin régime for trade in Liberian diamonds: S/RES/1521 (22 December 2003), operative paragraph 8. Finally, the objectives of the timber sanctions were to ensure that: (a) the Transitional Government of Liberia gained full authority and control over Liberian timber producing areas; and (b) government revenues from the timber industry were being used not to fuel conflict or in violation of the Security Council's resolutions, but rather for legitimate purposes that benefited the Liberian people: S/RES/1521 (22 December 2003), operative paragraphs 11, 12.

³⁶ The Security Council did not articulate an explicit objective in connection with the Rwanda sanctions régime. Various provisions of the resolution establishing the sanctions suggest, however, that the main objectives of the arms embargo were the establishment of a cease-fire and the achievement of a peaceful settlement to the conflict, within the framework of the Arusha Peace Agreement. See, e.g., S/RES/918 (17 May 1994), preambular paragraph 6 (stressing the importance of the Arusha agreement to the peaceful resolution of the conflict in Rwanda and the necessity for the parties to the conflict to implement that agreement), operative paragraph 1 (demanding that the parties to the conflict immediately cease hostilities, agree to a cease-fire, and bring an end to the violence in Rwanda), and operative paragraph 19 (inviting the Secretary-General and his Special Representative, in coordination with the Organization of African Unity and countries in the region, to continue their efforts to achieve a political settlement in Rwanda within the framework of the Arusha Peace Agreement).

³⁷ S/RES/713 (25 September 1991), operative paragraph 6.

³⁸ S/RES/733 (23 January 1992), operative paragraph 5.

³⁹ S/RES/788 (19 November 1992), operative paragraph 8.

⁴⁰ S/RES/1160 (31 March 1998), operative paragraph 8.

⁴¹ In the régime against the former Yugoslavia, the Council subsequently decided that the arms sanctions would be terminated upon the signing of a proposed Peace Agreement, including the conclusion of a regional arms control agreement. See: S/RES/1021 (22 November 1995), operative paragraph 1. In the Kosovo sanctions régime, the Council outlined a range of

sanctions would remain in place until it decided otherwise.⁴² In the case of the first Liberia régime, it was notable that the Council did not terminate the arms embargo in July 1997, when it might have been claimed that peace and stability had been established as the Council itself had welcomed both the successful holding of presidential and legislative elections and the fact that the elections had been certified as “free and fair” by the Chairman of ECOWAS and the U.N. Secretary-General.⁴³

(b) Securing the future and ongoing verification of disarmament

The Council established the general goal of achieving the complete, ongoing disarmament of a target as part of its sanctions régime against Iraq. That régime provides an example of a sanctions régime which has had both a particularly clear and verifiable goal, as well as objectives that are difficult to verify. The clear initial objective, of securing the withdrawal of Iraqi forces from Kuwait and the reinstatement of the Kuwaiti government,⁴⁴ was achieved through the hostilities undertaken by coalition forces during the Gulf War of early 1991. When the Council decided to maintain the sanctions after the Gulf War,⁴⁵ that clear objective was replaced by the following goals: (a) establishing a compensation fund to cover the losses incurred by foreign governments, nationals and corporations;⁴⁶ (b) ensuring that Iraq agreed to on-site inspection of its armament facilities;⁴⁷ (c) ensuring that Iraq was

detailed objectives at the same time that it set the overall objective of establishing peace and stability: S/RES/1160 (31 March 1998), operative paragraph 16(a)-(e).

⁴² For the Somalia sanctions régime, see S/RES/733 (23 January 1992), operative paragraph 5. For the Liberia sanctions régime, see: S/RES/788 (19 November 1992), operative paragraph 8.

⁴³ S/PRST/1997/41: Presidential statement of 30 July 1997. The joint statement of certification that the elections had been free and fair was contained in: S/1997/581 (24 July 1997), annex.

⁴⁴ S/RES/661 (6 August 1990), operative paragraph 2.

⁴⁵ S/RES/687 (3 April 1991), operative paragraphs 20-24.

⁴⁶ S/RES/687 (3 April 1991), operative paragraph 19 and 22.

⁴⁷ S/RES/687 (3 April 1991), operative paragraph 9 and 22.

disarmed of its weapons of mass destruction and missiles with a range of greater than 150 km and that it submitted to future and ongoing verification that it was not using, developing, constructing or acquiring such weapons;⁴⁸ and (d) ensuring that Iraq reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968.⁴⁹

Of the goals articulated in the post-Gulf War environment, objectives (a), (b) and (d) were achievable and objectively verifiable. By contrast, objective (c) was sufficiently general and difficult to satisfy that it is arguable that one could have legitimately claimed *ad infinitum* that it had not been satisfied. Was it possible for Iraq to demonstrate via objective criteria that it had complied with the requirement to submit to “future and ongoing verification”? At what point would consistent compliance with verification have been deemed sufficient? It is possible to debate the merits of a policy of total containment of a régime with an aggressive record – a policy which appears, with the benefit of hindsight, to have achieved the objective of depriving Iraq of any significant stockpiles of weapons of mass destruction. Nevertheless, the articulation of such a general and slippery objective provides the Security Council – and in particular its permanent members – with such broad discretion in determining when and even whether to lift the sanctions, that it renders the Council’s decision-making process susceptible to arbitrary and non-transparent approaches.

(c) *Ensuring that a target stops supporting terrorism*

The Council has set the objective of ensuring that a target stops supporting terrorism as part of its sanctions régimes against Libya, the Sudan, and the Taliban and Al Qaida. In

⁴⁸ S/RES/687 (3 April 1991), operative paragraphs 8, 10, 12 and 22.

⁴⁹ S/RES/687 (3 April 1991), operative paragraph 11 and 22.

each of those cases, the Council has also outlined quite specific steps, the taking of which might lead to the suspension or termination of sanctions. Nevertheless, the requirement of ceasing to provide support to terrorists is sufficiently difficult to substantiate that it is arguable that in any of those instances the Council could have maintained sanctions for as long as it saw fit – potentially *ad infinitum*.

In the case of Libya, the primary objective of the sanctions was initially to ensure Libya's cooperation with French, British and American investigations into the terrorist bombings of UTA flight 772 and Pan Am flight 103.⁵⁰ Subsequently, that primary objective shifted to ensuring that Libyan authorities handed over for trial the suspects for the bombing of Pan Am flight 103 and satisfied French authorities with respect to the bombing of UTA flight 772.⁵¹ It is notable, however, that although sanctions were suspended once Libya handed over suspects for trial by a Scottish Court sitting on neutral ground,⁵² the ultimate termination of the sanctions régime did not take place until more than four years later, once U.K, U.S. and French officials had negotiated a compensation deal with the Libyan

⁵⁰ S/RES/748 (31 March 1992), operative paragraphs 1, 3.

⁵¹ S/RES/883 (11 November 1993), operative paragraph 16 (providing for the possibility that the sanctions might be suspended if the Secretary-General were to report to it that the Libyan Government had ensured the appearance of those charged with the bombing of Pan Am flight 103 before the appropriate United Kingdom or United States court and had satisfied that French judicial authorities with respect to the bombing of UTA flight 772); S/RES/1192 (27 August 1998), operative paragraph 8 (deciding that the sanctions would be suspended immediately if the Secretary-General were to report to it that the suspects had arrived in the Netherlands for the purpose of being tried before a Scottish Court, or if they had appeared for trial before an appropriate court in the United Kingdom or the United States).

⁵² As mentioned in the summary of the Libya sanctions régime, above, the sanctions were suspended in April 1999, after Libya transferred two Lockerbie bombing suspects to the Netherlands for trial before a Scottish court. The Security Council provided for the possibility that the sanctions might be suspended on those grounds in S/RES/1192 (27 August 1998), operative paragraph 8. The sanctions were subsequently suspended when the Secretary-General reported that the conditions for suspension had been satisfied: S/1999/378 (5 April 1999); *Letter Dated 5 April from the Secretary-General Addressed to the President of the Security Council*; S/PRST/1998/10 (8 April 1999) *Presidential Statement of 8 April 1999*.

authorities.⁵³ The requirement of compensation had not been mentioned in any of the Council's earlier resolutions relating to the Libya situation.

It is possible to argue that the Security Council became convinced of Libya's sincerity to cease supporting terrorism once Libya agreed to provide such compensation to American and French families affected by the Pan Am and UTA bombings. It is equally possible, however, to draw the conclusion that the U.S. and France were able to use to their benefit the régime's vague objective of ensuring that Libya ceased supporting terrorism in order to prevent the termination of the sanctions until their own political objectives had been satisfied.⁵⁴ Regardless what conclusions one draws from the manner in which the sanctions were ultimately lifted, the Libya example does not provide a best-practice precedent of sanctions having been lifted as a result of the occurrence of objectively verifiable events.

In the case of the Sudan, the major objective of the sanctions was to induce the extradition from the Sudan of three individuals suspected of having undertaken an

⁵³ The Council terminated the sanctions in September 2003, after receiving a letter from the representative of Libya recounting steps taken by the Libyan Government to comply with its obligations connected with the sanctions régime. Those steps included accepting responsibility for the actions of Libyan officials, paying appropriate compensation, renouncing terrorism, and making a commitment to cooperate with further investigations. For the provision terminating the sanctions, see: S/RES/1506 (12 September 2003), operative paragraph 1. For the text of the Libyan letter, see: S/2003/818 (15 August 2003): *Letter dated 15 August 2003 from the representative of the Libyan Arab Jamahiriya addressed to the President of the Security Council*.

⁵⁴ At the time that the sanctions were applied, a number of speakers expressed concern that the vagueness of the sanctions régime's objectives would make them difficult to satisfy: S/PV.3063 (31 March 1992): Libya, p. 21 ("Operative paragraph 2 [of resolution 748 (1992)] contains unspecified demands: we do not know what criterion leads this Security Council to claim that Libya must commit itself definitively to cease all acts of aggression in which they allege my country to be implicated. We do not know when the Security Council will decide that the Jamahiriya has abided by the provisions of operative paragraphs 1 and 2 of the ... resolution so that the sanctions imposed under it may be lifted according to its terms"); Iraq, p. 36 (querying whether the sanctions were commensurate with the aims and objectives of resolution 748 (1992), or whether they were designed to "become sanctions for an unspecified period"); India, p. 57 (stating that an important aspect was the definition of the circumstances under which the sanctions either would not come into force at all or would be lifted and noting that,

assassination attempt in Ethiopia against President Mubarak of Egypt.⁵⁵ Connected to that objective was the secondary goal of ensuring that Sudan desisted from assisting, supporting and facilitating terrorist activities and from giving shelter or sanctuary to terrorist elements.⁵⁶ As with the case of Libya, the Sudan example demonstrates that it is difficult to verify precisely when a target has complied with an objective as general as ceasing providing support to terrorism. In June 2000, more than four years after the Sudan sanctions régime was first established, the Sudan's Minister for External Affairs sent a letter to the President of the Security Council, outlining the steps that the Sudan had taken to comply with its obligations under the sanctions régime and requesting that a meeting of the Council be convened in order to lift the sanctions.⁵⁷ Over the following days the President of the Security Council also received letters from the Foreign Ministers of Egypt and Ethiopia, as well as from the Chairmen of the Arab Group, the Non-Aligned Movement and the African Group, all supporting the Sudan's request that the sanctions be lifted.⁵⁸

despite efforts to inject more precision into the relevant paragraphs, it had not been possible to remove "the vagueness").

⁵⁵ S/RES/1054 (26 April 1996), operative paragraph 1(a).

⁵⁶ S/RES/1054 (26 April 1996), operative paragraph 1(b).

⁵⁷ S/2000/513 (1 June 2000): *Letter dated 1 June 2000 from the representative of the Sudan addressed to the President of the Security Council*, annex. In making the case that the Sudan had complied with its obligations connected to the sanctions régime, the Minister argued that the Sudan had: (a) done all it could to locate the individuals suspected of undertaking the assassination attempt against President Mubarak, but without success, cooperating fully with investigations carried out by the Governments of Egypt and Ethiopia; (b) taken a number of steps to demonstrate its commitment to curbing terrorism, including signing a number of international conventions designed to combat terrorism; (c) maintained good relations with all of its ten neighbours and was committed to the maintenance of international peace and security.

⁵⁸ The letters from the Foreign Ministers of Egypt and Ethiopia were not circulated as official documents, but are noted in resolution 1372 (2001), by which the Council ultimately terminated the sanctions: see S/RES/1372 (28 September 2001), preambular paragraph 4. For the other letters mentioned, see: S/2000/517 (1 June 2000), S/2000/521 and S/2000/533: letters dated 1, 2 and 5 June 2000 from the representatives of Algeria (in his capacity as Chairman of the Arab Group), South Africa (in his capacity as Chairman of the Coordinating Bureau of the Non-Aligned Movement) and Gabon (in his capacity as Chairman of the African Group), respectively, addressed to the President of the Security Council.

Despite the requests received in June 2000 advocating the swift convening of a meeting to lift the sanctions, the Council did not consider the matter again for a further fifteen months. In late-September 2001, the Council noted the steps that had been taken by the Government of the Sudan to comply with its obligations under the sanctions régime,⁵⁹ as well as a collection of correspondence it had received fifteen months earlier advocating the lifting of the sanctions against Sudan.⁶⁰ It then welcomed the accession of Sudan to various international conventions for the suppression of terrorism,⁶¹ and decided to terminate the sanctions.⁶²

In the case of the Taliban/Al Qaida sanctions, the Security Council has blended examples of both best- and worst- practice in its articulation of objectives. In its early decisions connected with the Taliban/Al Qaida sanctions régime, the Council articulated clear and objectively verifiable criteria, the achievement of which would lead to the lifting of sanctions. The major initial objective of the sanctions was thus to ensure that the Taliban turned Usama Bin Laden over to authorities in a country where he had been indicted.⁶³ In December 2000, the Council identified some additional requirements with which the Taliban must comply before the sanctions would be terminated, including: ceasing providing sanctuary and/or training for international terrorists; ensuring that its territory was not being

⁵⁹ S/RES/1372 (28 September 2001), preambular paragraph 2.

⁶⁰ S/RES/1372 (28 September 2001), preambular paragraphs 3-5.

⁶¹ S/RES/1372 (28 September 2001), preambular paragraph 6.

⁶² S/RES/1372 (28 September 2001), operative paragraph 1.

⁶³ S/RES/1267 (15 October 1999), operative paragraphs 2, 14. Although the Council also reaffirmed its earlier demand that the Taliban cease providing sanctuary and training for international terrorists [see preambular paragraph 8 and operative paragraph 1, reaffirming the demand made earlier by the Council in S/RES/1214 (8 December 1998), operative paragraph 13], the fact that it noted in operative paragraph 14 that the sanctions would be terminated once the Taliban had handed over Bin Laden to authorities in a country where he had been indicted suggests that the most important objective of the sanctions régime was to ensure the capture of Bin Laden.

used by terrorists or for the organization of terrorist acts against other States; cooperating with efforts to bring indicted terrorists to justice; and closing terrorist camps within its territory.⁶⁴ At the same time, the Council also attached a time-limit to the sanctions, deciding that they would terminate after twelve months unless it were to decide otherwise.⁶⁵ The incorporation of a time-limit in theory meant that as the time-limit approached, the Council would need to reconsider the situation, assessing whether the objectives had been met and, in the case of reapplication, either reaffirm or modify the objectives already outlined.

In the post-September 11 environment, however, the Council appears to have lost its appetite for articulating clear objectives in connection with the Taliban/Al Qaida régime. It has also eschewed time-limits. Instead, whenever modifying the sanctions or their application, the Council has noted that the sanctions would be reviewed after a certain period, at which point they would either be maintained in their current form or strengthened.⁶⁶ This impulse to maintain unlimited sanctions against Al Qaida is understandable. There are few who would advocate that Al Qaida is not a legitimate sanctions target or that the Council should adopt a lenient approach to such terrorist organizations. Nevertheless, as a matter of principle, the legitimacy of the Council's overall sanctions system suffers when there is a lack of transparency in the articulation of sanctions objectives, no matter how easy it might be to rationalise or justify such a lack of

⁶⁴ S/RES/1333 (19 December 2000), operative paragraphs 1, 2, 3. Operative paragraphs 23 and 24 of the same resolution also reinforce that these were the objectives of the régime.

⁶⁵ S/RES/1333 (19 December 2000), operative paragraph 23.

⁶⁶ S/RES/1390 (16 January 2002), operative paragraph 3 (noting that the sanctions would either be continued or improved after twelve months); S/RES/1455 (17 January 2003), operative paragraphs 1, 2 (noting again that the sanctions would be improved after twelve months); S/RES/1526 (30 January 2004), operative paragraph 3 (noting that the sanctions would be further improved in eighteen months, or sooner if necessary).

transparency.⁶⁷ If there is a legitimate reason for maintaining sanctions against a target – whether it be Somalia, Libya or Al Qaida – then it should not be a difficult matter to identify that reason transparently and to set transparent objectives, the achievement of which will lead to the termination of sanctions. Even if such objectives are unlikely ever to be fulfilled, as may be the case with Al Qaida, they should nevertheless be articulated.

In practice, such specific objectives would likely focus on responding to terrorist events that have already taken place. Thus, for instance, a more objectively verifiable goal connected with the Taliban/Al Qaida sanctions régime might be bringing about the capture and trial of specific individuals suspected of having been involved in Al Qaida-organized terrorist attacks. The Council could also provide for the possibility that sanctions against listed individuals and groups would be relaxed, suspended or lifted if those individuals were to cooperate with investigations into Al Qaida's activities or demonstrate through acts of good faith that they are no longer associated with Al Qaida.

11.1.3 Transparency in the Sanctions Committees

Traditionally the decision-making process in the Security Council's Sanctions Committees has been less than transparent.⁶⁸ The Committees have tended to meet in

⁶⁷ The Interlaken and Bonn-Berlin processes both stressed the importance of articulating clearly the criteria to be fulfilled through the application of sanctions. See: *Manual from the Interlaken Process*, below note 89, 5 (“[W]ell defined goals articulated at the outset help to minimize conflicts within the Sanctions Committees and Security Council by establishing clear criteria for determining how the measures are to be imposed, their durations, and their effectiveness”); *Results of the Bonn-Berlin Process*, below note 89, 38 (Comment 45: “The resolution should make it clear under which conditions the embargo provisions would be lifted”).

⁶⁸ See, e.g., Conlon, Paul, *United Nations Sanctions Management: a Case Study of the Iraq Sanctions Committee* (2000) Transnational Publishers, Ardsley, NY, 33 (stating that “non-transparency was assiduously cultivated by the Iraq Sanctions Committee, which held all its meetings in closed session”), 36 (concluding that “Non-transparency’s baneful influence affected many different aspects of the [Iraq] sanctions régime and contributed to its failure. Yet at no time was the principle itself questioned by anyone involved”).

closed sessions, with little public record of their proceedings.⁶⁹ Prior to 1995 the transparency of the Committees reached a low-point, with a number of Sanctions Committees failing to report to the Council on a regular basis, despite the fact that their mandates required them to undertake such reporting.⁷⁰

The main motivations for holding Sanctions Committee meetings behind closed doors and restricting public access to meeting records appear to be a concern regarding the sensitive, confidential nature of the issues discussed, as well as a desire to foster genuine, constructive debate rather than “grandstanding”.⁷¹ One commentator with first-hand experience of the inner workings of the 661 (Iraq) Sanctions Committee has contended, however, that discussion of sensitive, confidential matters accounted for a mere 2.5% of the 661 Committee’s meeting time, and that the closed meeting format in fact elicited little candour and frankness from Committee members.⁷² But even more damning is the same commentator’s conclusion that the lack of transparency in the proceedings of the 661 Committee actually aided Iraq and sanctions evaders, as it shielded them from the public spotlight.⁷³

⁶⁹ Nevertheless, there are some examples in the public domain of records from Sanctions Committee meetings. For an unauthorized collection of some of the early meetings of the Iraq Sanctions Committee, see: Bethlehem, Daniel L. & Lauterpacht, E., *The Kuwait Crisis: Sanctions and their Economic Consequences* (1991) Grotius Publications, Cambridge UK, Vol. 2, Part II, 773-985.

⁷⁰ Of the early Sanctions Committees only the initial Committee – the Southern Rhodesian Committee – consistently provided the Council with reports relating to its activities. Most Sanctions Committees did not submit regular written reports to the Council, however, with the Haiti Sanctions Committee failing to submit even one report during its sixteen-month existence.

⁷¹ Conlon, Paul, *United Nations Sanctions Management: a Case Study of the Iraq Sanctions Committee* (2000) Transnational Publishers, Ardsley, NY, 34.

⁷² *Ibid.*

⁷³ *Ibid.*, 151 (“Secrecy abetted the target state and its sanctions evaders. If the [Committee] had systematically published its waiver clearances, some of these patterns, the volumes involved, and the relevant names would have been put into the public domain. Moreover, if the [Committee] had published those waiver actions that failed to be authorized, sanctions evaders

Recognising that the Sanctions Committees were perceived to lack transparency, the President of the Security Council issued a note in March 1995, with the primary aim of improving transparency.⁷⁴ The note, which had the backing of all Council members, proposed the introduction of a number of measures designed to make the procedures of the Sanctions Committees more transparent. Those measures included the preparation of annual reports, with a concise summary of activities undertaken in the reporting period, as well as the expedited preparation of summary records of Committee meetings.⁷⁵ Four years later, in January 1999, the President of the Security Council issued another note regarding the work of the Sanctions Committees, outlining further proposals for improving transparency.⁷⁶ The statement suggested that transparency should be increased: by convening substantive and detailed briefings on the work of the committees, to be given by the Chairpersons of the committees;⁷⁷ by making publicly available summary records of formal meetings of the Sanctions Committee;⁷⁸ and by posting information on the work of the Sanctions Committees on the internet.⁷⁹

The transparency of the Sanctions Committees has improved considerably in certain respects as a result of these Council initiatives. Sanctions Committees now report to the

would have had to diversify their conduits and come up with more sophisticated tactics for fear of public scrutiny”).

⁷⁴ See: S/1995/234 (29 March 1995): *Note by the President of the Security Council* (suggesting the introduction of improvements to make the procedures of the Sanctions Committees more transparent).

⁷⁵ *Ibid*, paragraph 1.

⁷⁶ S/1999/92 (29 January 1999): *Note by the President of the Security Council: Work of the Sanctions Committees*.

⁷⁷ *Ibid*, paragraph 18.

⁷⁸ *Ibid*, paragraph 19.

⁷⁹ *Ibid*, paragraph 20.

Council on an annual basis,⁸⁰ information relating to each operating Committee is available via the internet,⁸¹ the Security Council has begun including additional details of the work of the Committees in its annual reports to the General Assembly,⁸² and a number of Committee Chairs have briefed the Council on their Committee's activities in both formal, open meetings and informal consultations.⁸³

Nevertheless, despite these positive initiatives, there is still no public access either to Committee meetings themselves, or to the records of those meetings. Even in respect of the

⁸⁰ For reference to the annual reports issued by the various Sanctions Committees, see Table E.

⁸¹ For links to the relevant information posted for each of the operating Sanctions Committees, see: <http://www.un.org/Docs/sc/committees/INTRO.htm> (last visited 30 June 2004).

⁸² Each year the Security Council submits a report on its work to the General Assembly, covering its activities from the middle of the previous year until the middle of the year in which the report is submitted. The report is usually the second official document issued for each General Assembly session, and the reporting period is presumably designed to ensure that the General Assembly receives information on the Council's most recent activities heading into each new session, beginning in September. Traditionally the Council's annual reports have included as an appendix a list of the meetings held during the reporting period by the Council's subsidiary organs, including Sanctions Committees. Since the report covering the period of 16 June 1997 - 15 June 1998, however, the annual reports have also contained a section on "Work of the subsidiary organs of the Security Council". For the first report including such a section, see: A/53/2 (1998): *Report of the Security Council to the General Assembly: 16 June 1997 - 15 June 1998*, pp. 159-69.

⁸³ For examples of oral briefings given by Sanctions Committee Chairs in formal Security Council meetings, see: S/PV.4027 (29 July 1999), pp. 2-5 (briefing by the Chairman of the 864 Committee); S/PV.4090 (18 January 2000), pp. 410 (briefing by the Chairman of the 864 Committee); S/PV.4113 (15 March 2000), pp. 2-7 (briefing by the Chairman of the 864 Committee); S/PV.4325 (5 June 2001), pp. 34 (containing a statement by the Chairman of the 1267 Committee on the activities of the Committee of Experts on Afghanistan); S/PV.4405 (5 November 2001), pp. 2-5 (containing a statement by the Chairman of the 1343 Committee on the activities of the Panel of Experts on Liberia); S/PV.4673 (18 December 2002), in general (briefings by the Chairmen of the 661 Committee, the 864 Committee, the 1267 Committee and the 1343 Committee); S/PV.4798 (29 July 2003), pp. 2-6 (briefing by the Chairman of the 1267 Committee); S/PV.4888 (22 December 2003), in general (briefings by the Chairmen of the 661, 751, 918, and 1132 Committees); pp. 2-8 (briefing by the President of the Security Council, in his capacity as the Chairman of the 1267 Committee).

Although no official written report is issued in connection with briefings given by Committee Chairmen in the informal consultations of the Council, the President of the Security Council sometimes issues a press statement after such consultations, providing a brief overview of the relevant Chairman's report. For examples of those statements, see: SC/7370 (22 April 2002) (noting that the members of the Council had just been briefed by the Chairman of the 1343 Committee); SC/7518 (30 September 2002) (noting that the members of the Council had just been briefed by the Chairman of the 1267 Committee); SC/7730 (15 April 2003) (noting that the members of the Council had just been briefed by the Chairman of the 1267 Committee, as called for in resolution 1455 (2003)).

most positive example of transparency – the submission of reports – the record of Sanctions Committees has improved without becoming stellar. While Sanctions Committees routinely submit annual reports on their work, those reports tend to lack genuine substance, often conveying little valuable information on the manner in which the Committees have functioned and providing few substantive or meaningful recommendations.⁸⁴

11.1.4 Recommendations for improving transparency

Of the five elements of the rule of law analysed here, transparency is arguably the one that is the least observed yet the easiest to redress. Increasing transparency does not require the elaboration of sophisticated new strategies, nor necessitate the allocation of new resources. It does not require a constitutional change or a modification to the Council's rules of procedure. The Council can improve its transparency track-record simply by conducting its business in a more open and accountable manner. The recommendations outlined here flow from the analysis above. They are thus geared towards increasing transparency in the Security Council's decision-making process, in the decision-making process in the Sanctions Committees, and in the Council's decisions themselves.

In order to improve the transparency of its decision-making process, the Security Council should hold discussions concerning the potential or actual application of sanctions in public. When the application of a new sanctions régime is proposed, the Council should meet in open session to discuss the proposal, with members placing their views and

⁸⁴

An exception was the final report of the 724 (former Yugoslavia) Committee, which contained significant information relating to the work of the Committee and providing useful recommendations in relation to the future management of U.N. sanctions régimes. See: S/1996/946 (15 November 1996), annex: *Final Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia*, (hereafter '*Final Report of the 724 Committee*').

concerns on-the-record. Where possible, the views of the potential target should also be presented. Subsequently, if the Council moves to vote on a draft resolution that would impose sanctions, Security Council Member States should speak in explanation of their vote. The Security Council's use of its sanctions powers should be considered a sober, serious occasion. The logic and rationale for taking such a step should thus be made clear both to the global public, but also to the target against which sanctions are imposed. The practice that has become more and more prevalent, according to which the Council has imposed sanctions with little or no public discussion, whether by way of advance consideration of the potential step of imposing sanctions or of debate at the point of taking such a step, must end. When the Council imposes sanctions, it should be clear to all that it has considered seriously the pros and cons of taking such a grave step, as well as the different alternatives that might be employed.

In order to improve the transparency of its sanctions-related decisions, the Security Council should clearly demonstrate that its actions are taken in accordance with legitimate authority. When applying sanctions the Council should invoke the Charter basis for taking action – i.e. Articles 39 and 41. As part of the requisite determination under Article 39 of a threat to the peace, breach of the peace or act of aggression, the Council should identify in as much detail and as clearly as possible, the precise nature and cause of the threat to the peace, breach of the peace or act of aggression. Where possible, this determination should be made in advance of the application of sanctions, in order to demonstrate that it is a considered decision rather than one of mere convenience in order to justify the application of sanctions. When the Council does indeed decide to apply sanctions, it should articulate specific objectives, the achievement of which will address the threat to the peace, breach of

the peace, or act of aggression and thus maintain or restore international peace and security. Objectives should thus be tied to objectively verifiable conditions, the satisfaction of which will trigger the easing or lifting of sanctions. If necessary, the Secretary-General could be tasked with reporting upon the satisfaction of those conditions.⁸⁵

Similarly, the meetings of the Sanctions Committees should be held in open session, with transcripts or summary records being made publicly available as soon as possible after each meeting.⁸⁶ As noted, maintaining discussions and decision-making behind closed doors can actually deprive the Committees of a valuable tool for publicising the activities of sanctions-busters and thus promoting adherence to and implementation of sanctions. In instances when discussions touch upon issues that are considered highly sensitive or confidential, the Committees could move into informal consultations. Such discussions should be strictly circumscribed, however, to the minimum period necessary to debate such confidential matters.

11.2 A less than constant practice: U.N. sanctions and the problem of consistency

“The power at the disposal of the Security Council is the power commanded by the solidarity of nations opposed to the transgression of the Charter of the United Nations. It is first and foremost the power of principle. What makes the Council’s task particularly onerous – and, I am sure, ultimately fruitful – is that principles must be consistently

⁸⁵ As noted in Chapter 10, section 10.1.3, the Secretary-General had played this role in the past. The Bonn-Berlin process also advocated such a role for the Secretary-General. See: *Results of the Bonn-Berlin Process*, below note 89, 63 (Comment 31: “The Expert Working Group recommends that the Secretary-General be tasked with reporting whether the conditions have been met, as the Secretary-General can be perceived to be less “politically driven” than the Security Council”).

⁸⁶ The Bonn-Berlin and Stockholm processes have advocated more transparency in the Sanctions Committees. See, e.g.: *Results of the Bonn-Berlin Process*, below note 89, 36 (Comment 36), 58 (Comment 18), 60 (Comment 22), 78 (Comment 13) and 80 (Comment 17); *Guidelines from the Stockholm Process*, below note 89, 24-5 (paragraph 43) and 34 (paragraph 64).

applied and the Council's actions must be based on equity and perceived to be so."

- U.N. Secretary-General Perez de Cuellar⁸⁷

As outlined in Chapter 2, the principle of consistency requires that power be exercised in a consistent manner. Decisions should thus be made in a predictable rather than an arbitrary manner. Consistency contributes to the rule of law by promoting consistent standards of behaviour. In the context of U.N. sanctions, the principle of consistency requires that once the Security Council has decided to impose sanctions, it should seek to ensure, to the extent possible, that its practice is consistent from one sanctions régime to another.⁸⁸ In particular, arbitrary decision-making should be avoided.

The track-record of the Security Council with respect to consistency is mixed. While early sanctions régimes defined themselves largely by their difference from each other, a more consistent practice seems to be evolving – particularly with respect to similar types of sanctions, such as arms embargoes. Nevertheless, there is room for improvement. Some differentiation between sanctions régimes is unavoidable and is sometimes desirable, as each sanctions régime usually arises from particular circumstances and aims to achieve particular objectives. Where possible, however, the Council should seek to avoid the perception of arbitrariness and strive to ensure that its practice is as consistent as it can be. When it adopts

⁸⁷ Statement by Secretary-General Perez de Cuellar, during a Security Council meeting at which the Council adopted resolution 670 (1990) to address the situation between Iraq and Kuwait: S/PV.2943 (25 September 1990), p. 7.

⁸⁸ The question of consistency in the application of sanctions, in the sense of whether the Security Council consistently makes the decision to apply sanctions in comparable situations that pose a threat to the peace, is dealt with below, in the discussion on the element of equality. As noted, this section considers the consistency of the Council's approach once it has taken the decision to apply sanctions.

a novel approach, such an approach should arise from considered reflection and aim at improvement.

The element of consistency can be broadly applied to the Council's sanctions-related activities in general, as the Council should ideally approach every aspect of its decision-making in a consistent manner. Thus the Council should seek where possible to employ a uniform approach to the aspects of its sanctions practice identified in chapters 5 through 10, above. With respect to each of those components of sanctions practice there is room for improvement in consistency. For the purposes of illustrating how the Council might improve its consistency of approach, analysis here focuses upon the Council's practice with respect to setting objectives connected with sanctions régimes, outlining the scope of sanctions, and using subsidiary bodies to administer and monitor sanctions.

11.2.1 Consistency and the objectives of sanctions régimes

The Council's practice with respect to outlining the objectives of sanctions régimes has already been explored above, under the heading of transparency. Just as the discussion there demonstrates that the Council's articulation of objectives has not always been transparent, it also illustrates a lack of consistency. While the Council has on occasion identified clear, objectively verifiable conditions the satisfaction of which will result in the suspension or termination of the sanctions, on other occasions it has articulated general or vague conditions, the satisfaction of which is extremely difficult to verify objectively. In the case of the Rwanda sanctions régime, the Council failed to stipulate any objective at all.

The Council's approach to objectives has not only been subject to variation from one sanctions régime to another. As the discussion above of the Taliban and Al Qaida sanctions régime illustrates, the Council's strategy has at times been inconsistent with respect

to objectives connected with the same sanctions régime. In its oversight of that régime, the Council has modified its approach from one of embracing precise and specific objectives, as demonstrated in its early resolutions such as 1267 (1999) and 1333 (2000), to articulating general or vague objectives, as in the case of resolution 1390 (2002), to neglecting to identify any explicit objective at all, as in the case of resolutions 1455 (2003) and 1526 (2004).

11.2.2 Consistency and the scope of sanctions

One area in which the Security Council's practice has exhibited an increasing degree of consistency is that of setting the scope of its sanctions régimes. Improvements in this sphere owe a debt to the sanctions policy roundtables that have been sponsored in turn by the Swiss, German and Swedish Governments and have come to be known as the "Interlaken", "Bonn-Berlin" and "Stockholm" processes.⁸⁹ Largely as a result of those processes, the Council's approach to establishing the scope of similar types of sanctions appears to be following a more consistent pattern. It has thus employed similar language in delineating the scope of its various sanctions régimes incorporating arms embargoes and financial, travel and aviation sanctions.

⁸⁹ The Interlaken process sought to hone the tool of targeted financial sanctions. The Bonn-Berlin process focused upon the design and implementation of arms embargoes and travel and aviation sanctions. The Stockholm process focused upon the question of making targeted sanctions effective. For the sanctions design manuals produced by those three processes as outcome documents, see: *Targeted Financial Sanctions: A Manual for Design and Implementation. Contributions from the Interlaken Process* (2001) Thomas J. Watson Jr. Institute for International Studies, Providence, RI (hereafter *Manual from the Interlaken Process*); *Design and Implementation of Arms Embargo and Travel Sanctions and Aviation-related Sanctions: Results of the Bonn-Berlin Process* (2001) Bonn International Center for Conversion, Bonn (hereafter *Results of the Bonn-Berlin Process*); and *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options: Results from the Stockholm Process on the Implementation of Targeted Sanctions* (2003) Uppsala University, Uppsala (hereafter *Guidelines from the Stockholm Process*).

Nevertheless, there remains clear room for improvement in the consistency of approach to the articulation of exemptions from sanctions. This need is greatest with respect to comprehensive sanctions. Although the Council's four major comprehensive sanctions régimes – the Southern Rhodesia, Iraq, Federal Republic of Yugoslavia (Serbia-Montenegro) and Haiti régimes – each possessed relatively uniform provisions outlining the sanctions themselves,⁹⁰ there were significant differences with respect to the provisions outlining humanitarian exemptions.

One category of commodities and products theoretically exempt from each of the comprehensive sanctions régimes was medical supplies.⁹¹ The operation of this exemption was complicated in the case of Iraq, however, by the introduction of the “dual-use” prohibition, according to which items with the potential for conversion or diversion for

⁹⁰ The core elements of the comprehensive prohibitions were that States were required to prevent the import into their territories of all commodities and products originating from the target and the sale or supply to the target of any commodities or products by their nationals or from their territories. For the Southern Rhodesian sanctions régime, see: S/RES/253 (29 May 1968), operative paragraph 3(a) and (c). For the Iraq sanctions régime, see: S/RES/661 (6 August 1990), operative paragraph 3(a) and (c). For the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 4(a) and (c). For the Haiti sanctions régime, see: S/RES/917 (6 May 1994), operative paragraphs 6 and 7.

The only distinguishing features were that the Southern Rhodesia regime addressed the prohibition to States Members of the United Nations, whereas the other régimes required “all States” to apply the sanctions (as noted in Chapter 4, above), and that the three latter régimes added the additional qualifier that States must prevent the use of their flag vessels or aircraft for selling or supplying commodities or products to the target. The Iraq régime initially included the reference to flag vessels, with aircraft being added when the Council confirmed the continued application of the sanctions after the Gulf War. See: S/RES/661 (6 August 1990), operative paragraph 3(c); S/RES/687 (3 April 1991), operative paragraphs 20, 24. For the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 4(c). For the Haiti régime, see: S/RES/917 (6 May 1994), operative paragraph 7.

⁹¹ For Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 3(d). For Iraq prior to the Gulf War, see: S/RES/661 (6 August 1990), operative paragraphs 3(c). For Iraq after the conclusion of Gulf War hostilities, see: S/RES/687 (3 April 1991), operative paragraph 20. For the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 4(c). For the Haiti régime, see: S/RES/917 (6 May 1994), operative paragraph 7.

military purposes could not be sold or supplied to Iraq.⁹² Thus despite the fact that medical supplies in theory remained exempt from the Iraq sanctions régime, in practice the 661 Committee did place holds upon the supply of medical items to Iraq, on the basis that they were potential dual-use items.⁹³

Another category of products that was exempt from each régime was foodstuffs. Again, however, the application of this exemption was not uniform. In the cases of Southern Rhodesia and Iraq, the Council permitted the sale or supply of foodstuffs “in humanitarian circumstances.” In the case of Iraq, a fact-finding mission that was deployed to Iraq just after the conclusion of the Gulf War hostilities determined that humanitarian circumstances did indeed exist.⁹⁴ The Council subsequently decided that foodstuffs would be exempt.⁹⁵ In

⁹² See: S/RES/666 (13 September 1990), operative paragraph 8 (recalling that resolution 661 (1990) did not apply to supplies intended strictly for medical purposes, but recommending that medical supplies should be exported under the strict supervision of the Government of the exporting State or by appropriate humanitarian agencies); S/RES/687 (3 April 1991), operative paragraphs 8-13, 24, 25 and 27 (qualifying the arms and related sanctions against Iraq with the aim of preventing the Iraqi Government from developing nuclear, chemical or biological weapons or anti-ballistic missiles with a range of greater than 150 km); S/23036 (13 September 1991) (containing the first report of the 661 Committee on the implementation of the arms and related sanctions against Iraq, which defined dual-use items as “items meant for civilian use but with potential for diversion or conversion to military use”: see paragraph 7). Some years later, the Council simplified the review of potential dual-use items through the introduction of the “Goods Review List”, which was designed both to provide a comprehensive list of items that were exempt, as well as to speed up the process for determining whether items could in fact be used to develop weapons of mass destruction. See: S/RES/1051 (27 March 1996), operative paragraph 5; S/RES/1284 (17 December 1999), operative paragraph 17; S/RES/1409 (14 May 2002), S/RES/1447 (4 December 2002); S/RES/1454 (30 December 2002).

⁹³ See: Center for Economic and Social Rights, *(UN) Sanctioned Suffering: a Human Rights Assessment of United Nations Sanctions on Iraq* (1996) Center for Economic and Social Rights, NY, 23 (documenting shortages in pharmaceutical supplies to Iraq and referring to an example in which the 661 Committee denied permission to export to Iraq the cytotoxic drug Mustine, on the basis that it contained mustard that might have had a military use as mustard gas).

⁹⁴ After the conclusion of Gulf War hostilities, the Secretary-General commissioned a report to explore whether the “humanitarian circumstances” foreshadowed in resolution 661 (1990) did in fact exist, thus enabling the provision to Iraq of foodstuffs: S/22366 (20 March 1991), annex: *Report to the Secretary-General on humanitarian needs in Kuwait and Iraq in the immediate post-crisis environment by a mission to the area led by Mr. Martti Ahtisaari* (the “Ahtisaari report”). The report concluded that humanitarian circumstances did exist, warning that the Iraqi people might soon face a “catastrophe”, including “epidemic and famine” if “massive life-supporting needs” were not met: see paragraph 37 of the report.

two other instances, the Council outlined a general exemption for foodstuffs from the outset, thus suggesting that it was moving away from the practice of stipulating that “humanitarian circumstances” must exist in order for food to be exempt from sanctions.⁹⁶

Other items or categories of items were exempted from some régimes but not from others. The Council exempted educational equipment in the case of the Southern Rhodesian sanctions régime,⁹⁷ and news and informational materials in the case of Southern Rhodesia and Haiti.⁹⁸ In the case of Iraq it exempted “civilian and humanitarian supplies”,⁹⁹ whereas in the Federal Republic of Yugoslavia (Serbia-Montenegro) and Haiti it exempted commodities and products for “essential humanitarian need.”¹⁰⁰ In the case of the Federal Republic of Yugoslavia (Serbia-Montenegro) it also permitted and then restricted

⁹⁵ After considering the Ahtisaari report, the Iraq Sanctions Committee decided that humanitarian circumstances did in fact exist and thus permitted States to export foodstuffs to Iraq, as long as they notified the Committee of any such exports. See: S/22400 (22 March 1991): *Note by the Secretary-General*, annex (containing a letter dated 22 March 1991 from the President of the Security Council, informing the Secretary-General of a decision that the Iraq Sanctions Committee had taken that same day, during its 36th meeting, with regard to the determination of humanitarian needs in Iraq). The Security Council, which had earlier empowered the Committee to make such a decision in S/RES/666 (13 September 1990), operative paragraphs 1, 5, subsequently endorsed that decision after the conclusion of the Gulf War, in S/RES/687 (3 April 1991), operative paragraph 20.

For food, sale or supply could proceed upon simple notification to the 661 Committee, whereas the Committee’s approval was required for civilian and humanitarian supplies: S/RES/687 (3 April 1991), operative paragraph 20.

⁹⁶ For the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/757 (30 May 1992), operative paragraph 4(c). For Haiti, see: S/RES/917 (6 May 1994), operative paragraph 7.

⁹⁷ S/RES/253 (29 May 1968), operative paragraph 3(d).

⁹⁸ For Southern Rhodesia, see: S/RES/253 (29 May 1968), operative paragraph 3(d). For Haiti, see: S/RES/917 (6 May 1994), operative paragraph 8.

⁹⁹ S/RES/687 (3 April 1991), operative paragraph 20.

¹⁰⁰ For the Federal Republic of Yugoslavia (Serbia-Montenegro), see: S/RES/760 (18 June 1992), sole operative paragraph. In its *Final Report*, the 724 Committee noted that an important part of its work had been determining the commodities and products that fell within the phrase “essential humanitarian need”. It considered applications for exemptions under that category on a case-by-case basis: see *Final Report of the 724 Committee*, above note 84, paragraph 13. For Haiti, see: S/RES/917 (6 May 1994), operative paragraph 7(b). Such exemptions required the approval of the Haiti Sanctions Committee under the no-objection procedure.

transshipment of goods and commodities along the Danube,¹⁰¹ exempted “clothing for essential humanitarian need”,¹⁰² permitted the supply of items that were essential to repairs being carried out on Serbian locks on the Danube,¹⁰³ and enabled the Federal Republic of Yugoslavia (Serbia-Montenegro) to export diphtheria serum temporarily, when global supplies were running dangerously low.¹⁰⁴ In the case of Haiti, the Council also exempted petroleum and petroleum products, including propane gas for cooking.¹⁰⁵

The Security Council’s inconsistency with respect to the elaboration of exemptions has not been confined to its comprehensive sanctions régimes. The Bonn-Berlin and Stockholm processes have recommended that the Council should also embrace standard exceptions from arms, financial and aviation sanctions.¹⁰⁶ There is thus general recognition

¹⁰¹ Transshipment was initially permitted with the approval of the 724 Committee: S/RES/757 (30 May 1992), operative paragraph 6. The Council subsequently modified the application of the exemptions on a number of occasions, restricting and then prohibiting transshipment. At first the Council prohibited the transshipment of particular products and commodities, including crude oil, petroleum products, coal, energy-related equipment, iron, steel, other metals, chemicals, rubber, tyres, vehicles, aircraft and motors of all types: S/RES/787 (16 November 1992), operative paragraph 9. It then prohibited transshipments in general, except for those specifically authorised by the 724 Committee, which would be subject to effective monitoring: S/RES/820 (17 April 1993), operative paragraph 15.

¹⁰² The Council first articulated clothing as an exemption in S/RES/943 (23 September 1994), operative paragraph 3. It subsequently reaffirmed this innovation in S/RES/970 (12 January 1995), operative paragraph 5, and S/RES/988 (21 April 1995), operative paragraphs 13, 15.

¹⁰³ S/RES/992 (11 May 1995), operative paragraph 2.

¹⁰⁴ S/RES/967 (14 December 1994), operative paragraph 1. This exemption was recommended by the 724 Committee: see *Final Report of the 724 Committee*, above note 84, paragraph 16(g). The Council permitted the export of the serum for a limited period of 30 days in order to address a shortfall of the serum in places other than the Federal Republic of Yugoslavia (Serbia and Montenegro). In permitting the export of the serum the Council stipulated that payment for the serum could only be paid into frozen accounts of the Federal Republic of Yugoslavia (Serbia and Montenegro): *ibid*, operative paragraph 2.

¹⁰⁵ S/RES/917 (6 May 1994), operative paragraph 7(c) and (d). The full list of such exemptions consisted of petroleum and petroleum products, including propane gas for cooking, authorized by the Haiti Sanctions Committee, and exemptions from the financial, petroleum and arms sanctions as requested by the President and Prime Minister of Haiti and approved by the Haiti Sanctions Committee.

¹⁰⁶ See: *Results of the Bonn-Berlin Process*, above note 89, 32 (Comment 22 – encouraging the Security Council’s Working Group on Sanctions to recommend the adoption of a standing list of exceptions from arms embargoes for non-lethal military equipment for humanitarian use) *Guidelines from the Stockholm Process*, above note 89, 112 (paragraph 347 - recommending

amongst intergovernmental sanctions practitioners of the desirability of improving consistency in the articulation of the parameters of the different types of sanctions at the Council's disposal.

11.2.3 Consistency and the Security Council's use of subsidiary bodies

As the discussion in Chapter 9 illustrates, the Council has established a range of subsidiary actors to facilitate the administration, monitoring and implementation of its sanctions régimes. The Council's use of subsidiary actors very much indicates an *ad hoc*, rather than a consistent approach.

i. The establishment of Sanctions Committees

The Council's use of the most standard type of sanctions-related subsidiary actor – Sanctions Committees – has not been entirely consistent. As noted in Chapter 8, the Council has sometimes established a new Committee when it has initiated a sanctions régime, whilst at other times it has created a new Committee some time later. On other occasions, the Council has entrusted responsibilities pertaining to a new sanctions régime to an existing Committee, or it has not established a Committee at all. This is one area where achieving consistency should be a simple matter. If Sanctions Committees are a good idea, then they should be established routinely at the time when sanctions are applied. While the mere existence of a Sanctions Committee does not guarantee that there will be effective administration, monitoring or implementation of a sanctions régime, in the absence of a Sanctions Committee a sanctions régime is likely to be neglected.

that humanitarian exceptions be outlined from financial sanctions, including permitting States to allow exemptions from assets freezes for humanitarian purposes), and 120 (paragraph 374 – recommending that clear humanitarian exemptions be provided from aviation sanctions for emergencies, humanitarian need and religious obligation).

The Council's practice has also varied with respect to the elaboration of the responsibilities bestowed upon Sanctions Committees. As Chapter 9 demonstrates, although Sanctions Committees generally share a common set of core tasks, including receiving information from States regarding sanctions violations and reporting to the Council with observations and recommendations, there has also been considerable variation in Sanctions Committee mandates. Although some differentiation of mandate is likely to be required in order to tailor a particular Committee's activities to the appropriate sanctions régime, all Sanctions Committees should be performing the same basic duties with respect to administering, monitoring and reporting on sanctions implementation.¹⁰⁷

ii. Commissions of Inquiry, Bodies of Experts and Monitoring Mechanisms

As noted in Chapter 9, the Council has created a range of subsidiary organs in addition to Sanctions Committees as part of its efforts to ensure that sanctions are effectively monitored and implemented. It is not always clear why the Council has decided in a particular instance to establish a "commission", as opposed to a "panel" or "group" of experts or a "monitoring mechanism". The responsibilities carried out by these entities are sometimes so similar that giving it a different name is effectively like putting a different saddle on the same horse. Experts seconded to these subsidiary entities perform similar core tasks, including investigating alleged sanctions violations, assessing how effective sanctions have been, and making recommendations regarding whether, and if so when and how, sanctions should be strengthened, loosened or lifted. In addition to using different names for what are

¹⁰⁷ See: *Guidelines from the Stockholm Process*, above note 89, 24 (paragraph 41: "[The Security Council should] consider establishing a standard framework and format to guide all Sanctions Committees, so as to facilitate their work and to ensure consistency and continuity among them").

essentially identical bodies, the Council has also appointed varying numbers of experts, providing them with mandates of differing length.

11.2.4 Recommendations for improving consistency

In order to adhere to the element of consistency, the Council should seek to ensure that its approach to sanctions is more systematic than *ad hoc*. This should be true both in terms of the manner in which it formulates its decisions, but also in terms of the manner in which it bestows responsibility upon other actors for the administration, monitoring and enforcement of sanctions. This section outlines some steps that might be taken to improve the consistency of the Council's approach.

One initiative that would strongly increase consistency would be to entrust a central body with responsibility for ensuring that new sanctions initiatives take into account the lessons of previous sanctions experience. A sanctions quality assurance unit could thus be created, with a mandate to verify that proposed sanctions-related draft resolutions were based upon best practice. Although the composition and sponsorship of draft resolutions remain the prerogative of Security Council Member States, the existence of such a body would help to ensure that sanctions best practice is not overlooked in the rush to take effective sanctions action. The sanctions quality assurance unit could consist of experts with considerable sanctions and legal drafting expertise, whose responsibility it would be to ensure that standard language and phrases are employed in the Council's resolutions which outline the contours of each sanctions régime.

Bearing in mind the recommendations outlined above concerning transparency, the unit could also ensure that draft resolutions consistently acknowledge the basis in the U.N. Charter for sanctions-related action, identify the precise nature of the relevant threat to the

peace, breach of the peace or act of aggression, and articulate the necessary objectives and conditions for easing and termination. It could also ensure a consistency of approach with respect to the scope of sanctions – both in terms of the prohibitions elaborated and any exemptions that are provided from those prohibitions. Moreover, it could also be tasked with ensuring a consistency of approach to the articulation of mandates for subsidiary actors.

Another initiative that would serve the interests of consistency in relation to the activities undertaken by sanctions-related subsidiary actors, would be to streamline the responsibilities currently distributed among a significant number of *ad hoc* actors. Thus, for example, instead of having a proliferation of Sanctions Committees, Monitoring Mechanisms and Panels of Experts, central bodies focusing upon sanctions administration, monitoring and investigation could be established. Although a movement towards generalised bodies might lead to a decreased focus upon issues relating to specific sanctions régimes, this drawback could be alleviated by ensuring that the general bodies each possessed sufficient expertise relating to the geographic and technical dimensions of each sanctions régime. Moreover, the centralisation of such tasks would eliminate the need to provide new subsidiary bodies with teething periods in which to learn to ply their trade and the centralised bodies would develop institutional memory regarding sanctions best practice.

The rationale for such centralisation is strongest with respect to Sanctions Committees and Monitoring Mechanisms. The tasks performed by the different Sanctions Committees and Monitoring Mechanisms are quite similar in nature, whereas it is arguable that establishing *ad hoc* Panels of Experts to undertake discrete investigative tasks might produce greater independence of findings. Although it has been alleged that the creation of a General Sanctions Committee might diminish the amount of attention paid to each individual

sanctions régime,¹⁰⁸ in practice there is significant overlap of the membership of the different Committees in any case, due to the fact that the smaller delegations of the members of the Security Council often do not have separate specialists for each Committee. Moreover, a General Sanctions Committee that was tasked with reviewing all sanctions régimes might pay even greater attention to neglected sanctions régimes, as it would be meeting on a much more regular basis than a number of the individual Committees.¹⁰⁹

11.3 First among equals: U.N. sanctions, the veto and the problem of equality

*"[T]he provisions of the Charter concerning collective security cannot become operational unless all countries fully respect international law and unless the principle of equality among States is made a reality."*¹¹⁰

*"The success of the United Nations in the maintenance of international peace and security, within the framework of collective security, is dependent on the ability ... of the Council to act in upholding the rule of law on a non-selective basis."*¹¹¹

As outlined in Chapter 2, the principle of equality requires that all parties over whom power is wielded are considered equal before that power and thus that decisions affecting the rights, entitlements and obligations of those parties are made in a consistent manner. In a legal context, equality requires that all parties should be considered equal before the law.

¹⁰⁸ For an argument to this effect, see: *Results of the Bonn-Berlin Process*, above note 89, 115.

¹⁰⁹ By way of quick comparison, the UNITA Sanctions Committee held twenty formal meetings between the beginning of 2000 and the end of 2001. During that same period, the Rwanda Sanctions Committee did not hold one formal meeting. See: *Index to Proceedings of the Security Council for 2000* (2001) United Nations, New York, p. xvi; A/56/2 (2001): *Report of the Security Council: 16 June 2000-15 June 2001*, pp. 444-445; A/57/2 (2002): *Report of the Security Council: 16 June 2001-31 July 2002*, pp. 53-4.

¹¹⁰ King Hassan II of Morocco, speaking at the Council's Summit Meeting held at the level of Heads of State: S/PV.3046 (31 January 1992), p. 37.

¹¹¹ Ambassador Redzuan of Malaysia, speaking during the Council's deliberations on the situation in Bosnia and Herzegovina: S/PV.3135 (13 November 1992), p. 35.

Thus the law should be equally applied and no one party should be considered to be above the law. In a political context, one method of achieving equality is to provide all parties with the opportunity to assume a position of power, through democratic representation.

In the context of U.N. sanctions, equality requires that if sanctions are imposed against one State in a given set of circumstances, then they should be applied against other parties in a similar set of circumstances. It also requires that the Security Council itself be democratically representative of the broader U.N. membership and that all of its members have the opportunity to stand for election to the Council. Section 11.3.1 explores how the veto power has undermined equality in practice. Section 11.3.2 examines the extent to which the Council can be said to be democratically representative. Section 11.3.3 then explores whether it is possible to reform the United Nations, or alternatively the Council's approach to sanctions, in order to ensure greater equality in sanctions practice.

11.3.1 Equality as equal treatment

At the United Nations the principle of equality is theoretically enshrined in Article 2(1) of the U.N. Charter, which provides that: "The Organization is based on the principle of the sovereign equality of all its Members." In practice, however, the aspiration of equality contained in Article 2(2) is considerably circumvented by Articles 23 and 27 of the Charter, which effectively enable some States to be more equal than others. Article 23(1) provides that any U.N. Member State can be elected to one of ten elected positions on the Security Council, but it also extends permanent Council membership to five countries – China, France, the Russian Federation, the United Kingdom and the United States. Article 27(1)

grants those permanent members the right of veto over all non-procedural matters.¹¹² Thus, although all States Members of the United Nations are equal in name and have the potential to sit on the Security Council, some are entitled not only to sit on the Council permanently, but also to prevent the Council from adopting a substantive decision.

The existence of permanent Security Council membership with the power of the veto seriously undermines the capacity of the Security Council to ensure that all States are considered equal before the law. It effectively permits five States to stand above the law, by enabling them to prevent the Council from taking any action with which they disagree. With respect to sanctions, this means that in identical factual circumstances where the application of sanctions is warranted in order to address a threat to international peace and security, one State may find itself the target of a sanctions régime, whereas another would be able to avoid the application of sanctions due to the fact that it itself is a permanent member of the Council or because it has a permanent member as a close ally.

In the Security Council's debates speakers have often remarked that the Council has not applied sanctions equally in its efforts to maintain peace and security. A commonly cited example is the Middle-East region, where the Council has applied sanctions against Iraq for its aggression against a neighbour, but not against Israel for actions that might also be argued to be in violation of Article 2(4) of the Charter.¹¹³ In practice, there have been

¹¹² Article 27(3) does not mention the word "veto", providing simply that: "Decisions on all [non-procedural] matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members." For discussion of the San Francisco debates concerning the inclusion of the veto, see Chapter 4, note 14, above.

¹¹³ See, e.g., the statement by Ambassador Mumbengegwi of Zimbabwe, made when the Council adopted resolution 686 (1991), which endorsed the post-Gulf War cease-fire: S/PV.2978, pp. 38-40 ("History will have on record – and will, indeed, commend – the Council's actions in taking four days to impose economic sanctions and five months to take military measures against Iraq when it occupied Kuwait. But history will not forgive the Council for renegeing on its responsibilities in other cases of occupation in the same region. ... The credibility and integrity

relatively few occasions when the actual use of the veto has prevented the Council from applying sanctions.¹¹⁴ But the threat of the use of the veto and even the mere knowledge that the veto might be utilised, have likely prevented sanctions from being proposed on many other occasions.¹¹⁵

11.3.2 Equality as equal representation

The principle of equality through democratic representation requires that the parties over whom power is exercised should be involved in the selection of those who exercise such power. Democratic representation encourages accountability, as those in elected positions of power must perform well in order to retain their power. In domestic political systems, democratic representation means that the people elect those in positions of power. In the context of UN sanctions, democratic representation requires that the broader membership of the UN, and potentially the broader public, should be involved in selecting which States sit on the Security Council.

The process for filling the fifteen seats on the Council displays some of the characteristics of democratic representation. The broader U.N. membership elects ten of the fifteen members of the Security Council (the “elected ten” or “E10”) on a rotating basis, with

of the Council will be greatly damaged and international law undermined if the Council continues to be perceived as inconsistent”).

¹¹⁴ In the case of South Africa, prior to the eventual application of sanctions the veto was used twice to prevent the application of a mandatory arms embargo. A draft resolution which would have imposed economic sanctions against South Africa was also vetoed: see *Repertoire of the Practice of the Security Council, Supplement for 1975-80* (1987) United Nations, New York, 399.

¹¹⁵ The *Repertoire of the Practice of the Security Council* documents a number of concrete examples in which a draft resolution which would have applied sanctions has not been put to the vote. One example occurred in August 1980, with respect to a draft resolution that would have called upon States to impose sanctions against Israel was not put to the vote: see *Repertoire, Supplement for 1975-80, ibid*, 400. It is probable, of course, that there have been many instances when, through the threat of a veto, a proposal to impose sanctions did not even proceed to the point of becoming a draft resolution.

five newly elected members joining the Council each year. The other five members – China, France, the Russian Federation, the United Kingdom and the United States – sit permanently on the Council (the “permanent five” or “P5”) and possess the veto power. Although there are no specific rules regarding which States should sit on the Council as part of the E10, an informal system of regional representation has evolved, according to which regional blocs elect one or more representatives each year.

There has been much discussion at the U.N. about the need to reform the Security Council so that it is more representative of the broader membership. When the U.N. was first established, the Security Council had eleven members, forming just less than one-fifth of the broader U.N. membership of 51 States.¹¹⁶ In the late 1960s the Council’s membership was expanded to fifteen, partly in response to the expansion of the broader membership as a result of the process of decolonization.¹¹⁷ At the time that the Council grew to fifteen, the broader U.N. membership numbered 113.¹¹⁸ Thus the ratio of the broader membership to Council members was just above seven: one. Nearly forty years after that first expansion of the Council, the membership of the Council remains at fifteen, while the broader membership has grown in excess of 190. In 2004 the ratio of the broader membership to Council members thus stands at over twelve: one.

¹¹⁶ Simma, Bruno (ed.), *The Charter of the United Nations: a Commentary* (2002: 2nd edition) Oxford UP, 176 (listing the 51 founding Member States of the United Nations).

¹¹⁷ The expansion in Security Council membership was approved by the United Nations General Assembly on 17 December 1963 and entered into force on 31 August 1965, although as Simma notes, the additional four Member States did not in fact assume their places on the Council until the beginning of 1966. See: Simma, *The Charter of the United Nations*, *ibid*, 437. For the General Assembly resolution approving the expansion, see: A/RES/1991 A (XXVIII) (17 December 1963).

¹¹⁸ Simma, *The Charter of the United Nations*, above note 116, Vol. II, 1361.

Proposals for further expanding the Security Council's membership have been on the U.N. General Assembly's agenda since 1979.¹¹⁹ Advanced discussions on the topic of Security Council reform have taken place since 1994 in the Open-ended Working Group on the Reform of the Security Council, which was established by the General Assembly at the end of 1993.¹²⁰ The Working Group has considered various reform proposals, including expanding Council membership to as many as twenty-five.¹²¹ Proposals have also been made to expand the permanent membership, but it is unlikely that additional permanent members would be accorded the veto. Any additional permanent members would thus perform a role that is qualitatively different from that of an original permanent member.

While the reform proposals being discussed might bolster, to some extent, the democratic representativeness of the Council, certain other modifications could be made to the election process to bolster the potential of the Council membership to strengthen the rule of law. It has been the practice in some regional blocs to allow candidates to stand effectively unopposed. Some blocs operate largely according to a rotational process. While on the one hand such a rotational process encourages broad representation within that bloc, it can lead to problematic outcomes, such as occurred recently in the African bloc when, according to the planned African rotation, Libya was to be nominated as the African representative at the next Council elections. Ultimately Libya withdrew its candidacy, thus preventing a potentially embarrassing situation from materialising, whereby a State that had

¹¹⁹ *Ibid.*

¹²⁰ The Open-ended Working Group was established by A/RES/48/26 (3 December 1993).

¹²¹ For a concise summary of the various proposals, see: Simma, *The Charter of the United Nations*, above note 116, Vol. II, 1361-3.

until recently been subject to significant coercive Council action under Chapter VII would itself have become a Security Council member.¹²²

In order to ensure that Security Council members are capable of contributing to the maintenance of international peace and security and strengthening the rule of law, certain standards should be applied in the election of new members. Libya is not the only recent example of a potential Council member with a problematic recent history in the resolution of international disputes. At least two other States, which have actually held Security Council seats in recent years, had dubious records in the maintenance of international peace and security at the time they became members of the Council. Prior to its election to the Security Council for the period 2002-3, Bulgaria had failed to regulate adequately the export of arms from its jurisdiction. It had featured in a number of reports of Panels of Experts concerning the origins of arms found to have been imported to States targets in violation of arms embargoes, thus demonstrating that Bulgaria had failed to fulfil its duty to comply with sanctions.¹²³ Guinea, which also sat on the Council from 2002-3, was itself accused by

¹²² Barringer, Felicity, 'U.S. Blocks Libya's Attempt to Gain Security Council Seat' (11 July 2003) *New York Times* A7.

¹²³ See, for example, the reports of the Panels of Experts on UNITA and Somalia: S/2000/203 (10 March 2000), enclosure: *Report of the Panel of Experts on violations of Security Council sanctions against UNITA*, paras 41-42 (documenting Bulgaria as the source of arms used to violate the UNITA sanctions) and 44 (documenting military training assistance provided in Bulgaria); S/2003/223 (25 March 2003), enclosure: *Report of the Panel of Experts on Somalia pursuant to Security Council resolution 1425 (2002)*, paras 80-85 (documenting a Bulgarian arms dealer who had violated the arms embargo against Somalia). It is notable that in the latter example the Panel "named and shamed" African countries (such as Yemen, Ethiopia, Eritrea and Djibouti) through which arms transited, without highlighting the countries in which the arms originated, which happened to include Bulgaria. The Chairman of the Somalia Sanctions Committee at the time – whose responsibility it was to forward the report to the Council – happened to be the Ambassador of Bulgaria.

Human Rights Watch of supplying arms to Liberian rebels whilst Liberia was subject to arms sanctions.¹²⁴

The ability of States with troublesome security records, such as Bulgaria and Guinea, to contribute to the maintenance of international peace and security and efforts to strengthen the rule of law must be open to question. Indeed, much as the election to the U.N.'s Human Rights Commission of countries known to be persistent violators of human rights ultimately draws that body into disrepute,¹²⁵ the election of States with such troublesome security records can only undermine the Security Council's ability to serve as a positive force for the rule of law in international affairs. The Security Council's own subsidiary bodies have recommended that organizations such as the North Atlantic Treaty Organization (NATO) and the European Union (EU) should make compliance with U.N. sanctions a condition of gaining membership to their organizations.¹²⁶ It is thus no small irony that the body responsible for applying sanctions permits documented sanctions violators to join its own ranks.

¹²⁴ See: Human Rights Watch, *Back to the Brink: War Crimes by Liberian Government and Rebels* (2002) HRW, New York, 11 (documenting Guinean support of the Liberian rebel group Liberians United for Reconciliation and Democracy (LURD)), 15 (calling on the Security Council to examine Guinea's role in fuelling the Liberian conflict).

¹²⁵ A prime example of this was the election of Libya as the Chairman of the U.N. Human Rights Committee in January 2003. See: Waddington, Richard, 'Libya wins chair of U.N. human rights body despite record' (21 January 2003) *The Independent* 12.

¹²⁶ S/1999/829 (28 July 1999) S/1999/829 (28 July 1999), annex: *Report on the Chairman's visit to Europe and participation in the seventieth ordinary session of the Council of Ministers of the Organization of African Unity, July 1999*, paras 14-15; S/2000/203 (10 March 2000), enclosure: *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, paragraph 56 (recommending that compliance with sanctions régimes should be among criteria considered by NATO and the EU when considering applications for membership).

11.3.3 Recommendations for Improving Equality

The solution to the equality deficit in the United Nations sanctions system is as simple as it is improbable. In order to ensure actual equality in terms of the use of the Council's sanctions powers, the power of veto should be abolished, along with permanent membership. This is unlikely to happen, of course, because those who wield the veto would likely use it to prevent any such reform. Moreover, despite the manner in which the veto undermines the principle of equality, it is arguable that its existence has encouraged most major powers to remain within the United Nations framework most of the time.

As it is extremely unlikely that the veto will be abolished, it is necessary to think of how to manage the veto so that it undermines to the minimum extent possible the potential of sanctions to reinforce and strengthen the rule of law. One strategy that might be employed would be to encourage restraint in the use of the veto.¹²⁷ A second strategy could be for the elected members to band together more regularly in a bloc, thus meaning that they could effectively wield a veto.¹²⁸ While this strategy would not ensure that all players were treated equally before the law, it would mean that all members of the Security Council effectively had the potential to wield a veto, thus creating a greater sense of equality on the Council.

¹²⁷ At San Francisco the permanent members in fact issued a declaration concerning voting procedure in the Security Council, in which they suggested that they would use the veto with restraint. See: *Documents of the UNCIO*, Vol XI, 710-14: *Statement by the Delegations of the four Sponsoring Governments on Voting Procedure in the Security Council*, paragraphs 8 ("it is not to be assumed, however, that the permanent members, any more than the non-permanent members, would use their "veto" power willfully to obstruct the operation of the Council").

¹²⁸ In fact, the permanent members implied in their declaration on voting procedure that the non-permanent members would in effect possess a collective veto, as no decision could be made by the permanent members alone. See: *ibid*, paragraph 8 ("It should also be remembered that under the Yalta formula the five major powers could not act by themselves, since even under the unanimity requirement any decisions of the Council would have to include the concurring votes of at least two of the non-permanent members. In other words, it would be possible for five non-permanent members as a group to exercise a "veto").

Unfortunately, however, such a strategy might also have the effect of tying the Council's hands on a more frequent basis, thus risking a return to the days of Cold War paralysis.

One area in which the effects of the veto upon sanctions practice could be mitigated through the judicious use of cooperation between the elected ten is in the employment of time-limits. When sanctions are imposed for an unspecified period, any permanent member can veto the decision to terminate sanctions. In order to limit the ability of the permanent members to dictate when, and indeed if, sanctions will be terminated, the elected ten could band together to ensure that sanctions are always imposed with a time-limit. Such time-limits should be set for no longer than two years, as within two years a completely different set of elected ten members sit on the Council. If it is necessary to maintain the sanctions, then it should be a relatively simple matter for the Security Council to adopt a resolution extending the sanctions. If it is not possible to obtain sufficient votes to maintain sanctions, then it is highly unlikely that the necessary political will to implement the sanctions would exist in any case.

With respect to democratic representation, it seems clear that there should be some expansion in the membership of the Security Council. If and when such an expansion takes place, permanent membership without the right of veto is likely to be extended to a handful of Member States. This development would have the disadvantage of creating yet another layer of inequality, making the new "permanent members" more equal than most, but still not as equal as some. It would have the advantage, however, of ensuring that there would be some non-veto-wielding members with consistent institutional memory of the Council's practice and procedures, thus perhaps offsetting the decided advantage that currently works in favour of the current P5 vis-à-vis the inexperienced E10. In terms of equality, however,

the expansion of the membership of the Security Council – however great it may be and however many additional benefits are accorded to the new “permanent members” – may ultimately amount to no more than placing extra chairs on the deck of the Titanic.

Even if it is possible to tame the veto through a combination of fostering restraint and encouraging creative cooperative techniques among the E10, the lack of genuine equality in sanctions practice will remain a sore thumb from the perspective of the rule of law. But to the extent that the Security Council’s sanctions practice can be reformed so that it adheres to the other four principles of the rule of law – transparency, consistency, due process and proportionality – the argument might still be made that, although the principle of equality ultimately remains unsatisfied, at least in those instances when the Council gathers the necessary consensus to apply sanctions, it can do so in a manner that reinforces and strengthens the rule of law. Thus, if those other elements are consistently satisfied, the Council’s sanctions practice should retain the potential to instil confidence in the sanctions system and to induce the widespread compliance of Member States with sanctions régimes.

11.4 Guilty until proven innocent? U.N. sanctions and the problem of due process

As outlined in Chapter 2, the principle of due process requires that parties against which coercive power is proposed to be exercised should be given a fair hearing and granted the opportunity to express their point of view regarding the potential decision. In the context of U.N. sanctions, the principle of due process requires that potential sanctions targets should be afforded the possibility to present their version of events. In other words, they should be presumed innocent until proven guilty. The Security Council’s track-record with respect to due process is not strong. While States targets have been accorded some

measure of due process, by virtue of the fact that they have generally been granted the opportunity to present their point of view at formal meetings when the Council votes to apply sanctions, little due process has been extended to non-State actors and individuals.

11.4.1 Due process and States targets

Of the various targets of U.N. sanctions, only Member States have been accorded the opportunity to place their views regarding the proposed application of sanctions on the record in formal Security Council meetings. Representatives of Iraq, Yugoslavia (prior to dissolution), Libya, Liberia, Rwanda and the Sudan have thus outlined their Government's position regarding the actual or potential application of sanctions against their country.¹²⁹ One other State target that was not a member of the United Nations – the Federal Republic of Yugoslavia (Serbia-Montenegro) – has also been granted the chance to express its

¹²⁹ South Africa did not address the Security Council at the meeting at which sanctions were imposed, but it is not clear that it was prevented from so doing. For that meeting, see: S/PV.2046 (4 November 1977). For Iraq's view on the sanctions imposed against it, see: S/PV.2933 (6 August 1990), pp. 11-15 (when the Council adopted resolution 661 (1990), thus imposing sanctions); S/PV.2981 (3 April 1991), pp. 21-35 (when the Council adopted resolution 687 (1991), confirming the ongoing application of sanctions beyond the conclusion of the Gulf War). For Yugoslavia's position, calling for the application of an arms embargo, see: S/PV.3009 (25 September 1991), pp. 620. For Libya's view prior to the application of sanctions, see: S/PV.3033 (21 January 1992), 4-25 (two months prior to the application of sanctions, when the Council adopted resolution 731 (1992)); S/PV.3063 (31 March 1992), pp. 3-22 (just before the Council adopted resolution 748 (1992), imposing sanctions). For Rwanda's views on the proposed sanctions against it, see: S/PV.3377 (17 May 1994), pp. 2-6. For the views of the Sudan on the sanctions proposed against it, see: S/PV.3660 (26 April 1996), pp. 2-10.

With respect to the Liberian sanctions régimes, a Liberian representative expressed the view of his Government prior to the application of the 788 sanctions régime. See: S/PV.3138, pp. 13-20 (prior to the adoption of resolution 788 (1992), applying sanctions). The views of the Liberian Government were not expressed upon the application of the two subsequent sanctions régimes, however, which were each imposed without substantive discussion. See: S/PV.4287 (7 March 2001) (imposing the 1343 sanctions régime); S/PV.4890 (22 December 2003) (imposing the 1521 sanctions régime). Nevertheless, prior to the most recent application of sanctions against Liberia the Chairman of the Liberian National Transitional Government, Mr. Charles Bryant, was granted the opportunity to present his views before the Council. See: S/PV.4981 (3 June 2004), pp. 6-10. Despite Chairman Bryant's plea to lift the timber and diamond sanctions, two weeks later the Council adopted resolution 1549 (2004), extending the application of those sanctions.

opinion regarding proposed sanctions.¹³⁰ From a due process perspective, it is positive that most States targets have been granted the opportunity to argue their case at the open meetings at which the Council imposed sanctions. Although the spectre of a rogue régime arguing its case before the global public may be unpalatable,¹³¹ it is surely better to provide other States with the opportunity to refute such claims, than to sweep them under the carpet.

11.4.2 Due process and non-State targets

The question of providing due process to non-State actors, such as the illegal minority régime in Southern Rhodesia or the Angolan rebel group UNITA, is complicated, as issues of logistics and recognition would arise were it proposed that such actors should be entitled to appear before the Council to plead their case.¹³² The proposition of according due process to a non-State actor such as Al Qaida raises even more thorny issues, as the Council would understandably be reluctant to take any action that might provide a forum for terrorists to justify their actions or suggest implicit Security Council recognition of that

¹³⁰ The entity sometimes referred to as Serbia-Montenegro and sometimes as the Federal Republic of Yugoslavia was eventually admitted to United Nations membership on 1 November 2000, under the name “the Federal Republic of Yugoslavia”. See: S/RES/1326 (31 October 2000) (recommending to the General Assembly that the Federal Republic of Yugoslavia be admitted to membership); A/RES/55/12 (1 November 2000) (resolution of the General Assembly admitting the Federal Republic of Yugoslavia as a Member State. Although the views of the Government of the Federal Republic of Yugoslavia (Serbia-Montenegro) were not expressed prior to the adoption of resolution 757 (1992), applying sanctions, a representative was permitted to air that Government’s position when the Council adopted resolution 787 (1992), strengthening those sanctions. See: S/PV.3137 (16 November 1992), 67-77 (statement by “Foreign Minister Djukic”). When the Council imposed sanctions against the Federal Republic of Yugoslavia to address the situation in Kosovo, the target’s position was expressed by Mr. Vladislav Jovanovic: S/PV.3868 (31 March 1998), 15-19 (upon the adoption of resolution 1160 (1998), applying sanctions against the Federal Republic of Yugoslavia).

¹³¹ This occurred in the case of Rwanda, where the representative of Rwanda expressed the views of the régime which was at that very moment perpetrating genocide against its people. See: S/PV.3377 (17 May 1994), 2-6. A number of other delegates argued that the Rwandan intervention had been in poor taste. See, for example the same meeting at 11 (New Zealand) and 12 (United Kingdom).

entity's legitimacy. Nevertheless, the principle of due process requires that an assumption of innocence be accorded even to those accused of the most heinous of crimes. A robust, rule of law-based sanctions framework would thus seek to extend due process in some form to any potential sanctions target.

11.4.3 Due process and individuals

The due process failings of the U.N. sanctions system are particularly pronounced with respect to targeted individuals. As part of a movement towards better targeted, "smart sanctions", the Security Council has increasingly applied sanctions against individuals, imposing travel and financial sanctions against leaders and officials deemed to share some responsibility in creating the circumstances necessitating the imposition of sanctions. This development is generally positive, as it aims to focus the coercive action upon decision-makers and specific targets associated with them in order to minimize the unintended impact upon innocent civilian populations.

The imposition of individual travel sanctions has proven uncontroversial on the whole, as placing restrictions upon a target's ability to travel internationally is generally seen as posing a nuisance to the target individuals, rather than infringing upon their basic rights. The application of financial sanctions, on the other hand, has led to significant due process concerns. The impulse to freeze bank accounts is understandable, particularly where target leaders may be suspected of having embezzled substantial amounts of state-owned funds. Nevertheless, the act of freezing bank accounts entails a significant infringement upon individual rights and freedoms, potentially leaving targets without the means to support

¹³² Bailey & Daws note that in May 1966 the illegal Southern Rhodesian régime sought to address the Security Council, but its request was rejected: Bailey & Daws, *The procedure of the UN*

themselves financially. To date, targeted individuals have been granted little opportunity to dispute the asserted facts leading to the inclusion of their names on financial blacklists. The Taliban/Al Qaida sanctions régime provides a case-in-point.

Under the Taliban/Al Qaida sanctions régime, States are required to freeze the assets of individuals and entities listed on a “blacklist” of individuals and entities who are associated with Usama Bin Laden, the Taliban and Al Qaida.¹³³ The blacklist is compiled by the Afghanistan/Taliban/Al Qaida Sanctions Committee (the “1267 Committee”), on the basis of suggestions submitted by Committee Member States.¹³⁴ When proposals are made to add individuals or entities to the list, Committee Member States have a period of 48 hours in which to object to the proposals. If no Member State objects within that 48-hour window, then the proposed additions are included in the list. Once an individual or entity is placed on the list, they cannot be removed unless all fifteen Committee members agree to their removal.¹³⁵

A number of individuals have sought to have their names removed from the list by appealing both to the Sanctions Committee itself and to the capitals of States Members of the Taliban/Al Qaida Sanctions Committee (the “1267 Committee”).¹³⁶ Some individuals

Security Council, above note 3, 156.

¹³³ S/RES/1390 (16 January 2002), operative paragraph 2(a); S/RES/1455 (17 January 2003), operative paragraph 2; S/RES/1526 (30 January 2004), operative paragraph 1(a).

¹³⁴ The process by which proposed individuals and entities are added to the list has been ascertained through off-the-record interviews with diplomats and members of the U.N. Secretariat. The Taliban/Al Qaida black-list itself is posted on-line at the following address: <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm> (last visited on 30 June 2004).

¹³⁵ The 1267 Committee’s Guidelines note that decision-making is by consensus. See paragraph 9 of the guidelines, posted at: http://www.un.org/Docs/sc/committees/1267/1267_guidelines.pdf (last visited on 30 June 2004).

¹³⁶ See, e.g., Duffy, Andrew, “Ottawa man “devastated” by charges of terror links: Accused wanted in U.S. for his role in money transfer firm has “no job, no income” (16 April 2002) *The Ottawa Citizen*; Rupert, Jake, “Canada fights to clear man’s name: Liban Hussein on list of alleged financiers of al-Qaida” (13 June 2002) *The Ottawa Citizen*; Lynch, Colum, “U.S. Seeks

have also brought legal proceedings before the European Court of Justice, seeking to have the order freezing their assets overturned on the grounds that the order violated the right to a fair and equitable hearing.¹³⁷ The 1267 Committee itself has acknowledged the need to strike a balance between “respecting the human rights of those inscribed on the list” and “the need to take preventive measures in the struggle against terrorism.”¹³⁸ It has also noted that several States have “stressed the importance of adhering to the rule of law and due process standards while implementing the sanctions measures.”¹³⁹

In response to concerns regarding the process by which individuals are placed on the financial blacklist, the 1267 Committee has included in its guidelines an elaborate procedure by which individuals can be “delisted”.¹⁴⁰ According to that procedure, listed individuals can petition their Government to request review of the case.¹⁴¹ Their Government can then approach the Government that originally proposed that the individual be listed (the “designating Government”), requesting consultations on the individuals concerned.¹⁴² If, after those consultations, their Government then wishes to pursue a “de-listing request”, it can

to Take 6 Names Off U.N. Sanctions List; Administration Was Criticized for Offering Little Proof That Individuals, Groups Aided Al Qaida” (22 August 2002) *The Washington Post*.

¹³⁷ See, e.g., the following three cases brought before the European Court of Justice (Court of First Instance): Case T-306/01, *Abdirisiak Aden and others v. EU Council and EC Commission*; Case T-315/01, *Yassin Abdullah Khadi v. Council and Commission*; Case T-318/01, *Omar Mohammed Othman v. Council and Commission*.

¹³⁸ S/2002/1423 (26 December 2002), annex: *Report of the 1267 Committee for 2002*, paragraph 12. See also paras 11, 47 of the same report. [latest: S/2004/281 (8 April 2004): *Report of the 1267 Committee for 2003*.]

¹³⁹ S/2004/281 (8 April 2004): *Report of the 1267 Committee for 2003*, paragraph 45 (noting that several States had made such comments to the Chairman of the 1267 Committee, upon two visits he made to countries that were strategically important to the implementation of the Taliban/Al Qaida sanctions, including Afghanistan, Germany, Indonesia, Italy, Pakistan and Saudi Arabia).

¹⁴⁰ See: *1267 Committee Guidelines*, above note 135, paragraph 7.

¹⁴¹ *Ibid*, paragraph 7(a).

¹⁴² *Ibid*, paragraph 7(b).

seek to persuade the designating Government to submit a joint request for de-listing.¹⁴³ The 1267 Committee then has the final decision as to whether a de-listing will proceed.¹⁴⁴ As noted in Chapter 9, Committee decisions are made by consensus, meaning that if one of the fifteen Committee members objects, a decision to de-list cannot proceed.¹⁴⁵ In such an instance, the Committee's guidelines provide that the matter can be submitted to the Security Council.¹⁴⁶ It is highly unlikely, however, that in the absence of Committee consensus to de-list, there would emerge a consensus to refer the matter to the Security Council.

What is striking about the de-listing procedure is that listed individuals have no capacity to address the 1267 Committee directly to present their concerns and protest their innocence. They must rely upon a sponsor government, which – if it can be convinced to proceed with the case – must then effectively rely upon the goodwill of the State that originally suggested the individual be listed, in order for the matter to proceed to the Committee.¹⁴⁷ In a domestic legal context, this is analogous to requiring agreement between the prosecution and the defence before even permitting the defendant's case to be heard. On a practical level, it is understandable that the Committee is reluctant to allow petitions to proceed unless they are likely to succeed, as it might otherwise be inundated with petitions that are unlikely to go anywhere. From a due process perspective, however, it would be preferable to permit such petitions to go ahead – whether or not they are sponsored by a

¹⁴³ *Ibid*, paragraph 7(d).

¹⁴⁴ *Ibid*, paragraph 7(e).

¹⁴⁵ See Chapter 9, section 9.1.3.

¹⁴⁶ *Ibid*.

¹⁴⁷ Technically a petitioning State can proceed with the matter without agreement from the designating State. See *ibid*, paragraph 7(d). In practice, however, it is most unlikely to do so.

Government.¹⁴⁸ Designating States should also be required to elaborate clear and compelling reasons why such individuals should remain on the list.

While the 1267 Committee has responded to concerns regarding the legitimacy of the listing process by establishing a de-listing process, the Security Council has endeavoured to address such concerns by elaborating exemptions from the sanctions where the relevant funds, assets or resources were necessary for “basic” or “extraordinary” expenses.¹⁴⁹ It has also qualified that States can permit frozen accounts to earn interest and to receive outstanding payments owed under contracts, agreements or obligations that had arisen prior to the application of sanctions.¹⁵⁰ Despite these efforts to enable listed individuals to support themselves financially, the 1267 Committee’s annual report for 2003 suggests that the exemptions process has not operated particularly effectively. During the course of 2003, the Committee received a mere two notifications from Member States regarding exemptions sought by individuals.¹⁵¹ In an illuminating acknowledgement, the Committee noted that it was drafting procedures designed to streamline the processing and consideration of exemptions under resolution 1452 (2002), observing that those procedures should ensure that the exemptions were applied “in a transparent and effective way.”¹⁵²

¹⁴⁸ See also: *Guidelines from the Stockholm Process*, above note 89, p. 103 (paragraph 320: “Sanctions Committees should consider possible mechanisms or procedures to allow individuals listed as targets to submit information directly to the Chair of the Sanctions Committee in cases where the targeted individual is unable to petition his or her Government of residence and/or citizenship”).

¹⁴⁹ S/RES/1452 (20 December 2002), operative paragraph 1.

¹⁵⁰ S/RES/1452 (20 December 2002), operative paragraph 2.

¹⁵¹ S/2004/281 (8 April 2004): *Report of the 1267 Committee for 2003*, paras 22-24.

¹⁵² *Ibid*, paragraph 24.

11.4.4 Recommendations for strengthening due process

Of all of the elements explored in this study, the one with perhaps the greatest resonance as a symbol of the rule of law is due process. As the discussion above illustrates, with the exception of States targets, which have generally been granted an opportunity to place their version of events on-record, the Council's adherence to the principle of due process has been somewhat piecemeal. The recommendations outlined below aim to improve the extent of due process accorded to potential and actual targets. Some of them apply to situations involving any of the three types of targets analysed above – States, non-State actors and individuals. Others apply specifically to the case of individuals who are targets.

As a general principle, potential targets of sanctions should be afforded an opportunity to present their version of events, so that Council members can make a considered determination as to whether the application of sanctions is justified and necessary. In situations where it is not practical for potential targets to present their case directly before the Security Council, fact-finding missions could be tasked with the responsibility of presenting an objective assessment of the facts. In the Libyan example, for instance, due process might have been well-served by establishing a fact-finding mission to ascertain the facts and to determine conclusively whether Libya was obstructing investigations into the terrorist airline bombings to the extent that it posed a threat to the peace. Although it is likely that most cases involving a potential threat to the peace would require immediate action, the Libyan example does not appear to have been one of those cases. Some years had elapsed since the incidents at the heart of the dispute had taken place, and it is difficult to see how waiting a matter of a few more weeks or months to

receive the findings of an objective fact-finding mission would have led to an increased threat.

There is a clear and pressing need for due process reform with respect to the application of financial sanctions against individuals. While the articulation of exemptions for basic and extraordinary expenses is a positive development, it does not offset the current due process deficit. Where individuals stand to be deprived of access to their own personal property and livelihood, they should be provided with maximum due process. The listing and de-listing process for individual sanctions currently operates in such a way that the presumption is of guilt rather than innocence, with individuals possessing no as-of-right opportunity to hear, let alone contest, the accusations levelled against them. Instead, they must rely upon the good will of their own government to bring their case before the relevant Sanctions Committee and then they must convince all Committee members, including the member responsible for listing them, that they should be de-listed. Is this the model of due process the Security Council has in mind when it speaks of the importance of establishing justice and the rule of law in post-conflict societies?

The listing process likely evolved because of a concern that those who stand to have financial sanctions imposed against them would move their finances to a safe place if they knew that there was a possibility that they would be sanctioned. Thus the rush to sanction, without providing full due process, is understandable. Nevertheless, if Sanctions Committees fail to provide adequate due process, they risk a situation emerging whereby States might refuse to implement such sanctions, thus undermining both the effectiveness of the sanctions régime and the credibility of the Committees and the Council itself.

One method by which the Committees could afford greater due process to listed individuals would be to list them temporarily, pending a genuine consideration of the merits of the allegations levelled against them. Such a consideration could take place in the Committee itself or before a competent body established by the Security Council specifically for the purpose of hearing such due process appeals. Once a listed individual's situation had been closely considered in such a manner, the Committee would then decide to delist or relist the individual, based on the findings that emerge.

A number of useful recommendations for improving due process have also arisen from the Stockholm process, including that the Security Council could: establish clear and transparent guidelines for determining which individuals are to be listed as targets;¹⁵³ create an independent body to monitor observance of the due process rights of targeted individuals;¹⁵⁴ utilise the expertise of the U.N.'s Office of the High Commissioner for Human Rights to ensure that the procedures for compiling lists of targets are in conformity with international human rights standards;¹⁵⁵ and introduce administrative or judicial processes that fulfil the ordinary expectations of due process.¹⁵⁶

11.5 A disproportionate burden: the unintended consequences of U.N. sanctions upon innocent civilian populations and third States

"Sanctions, as is generally recognized, are a blunt instrument. They raise the ethical question of whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behaviour is unlikely to be affected by the plight of their subjects. Sanctions also always have unintended or unwanted effects."

¹⁵³ *Guidelines from the Stockholm Process*, above note 89, 28 (paragraph 50).

¹⁵⁴ *Ibid*, 28 (paragraph 50).

¹⁵⁵ *Ibid*, 33 (paragraph 63).

¹⁵⁶ *Ibid*, 97 (paragraph 284).

- U.N. Secretary-General Boutros-Boutros Ghali, 25 January 1995¹⁵⁷

*“One of the areas in which the Council can make a contribution to the rule of law and international justice is that of sanctions imposed pursuant to Chapter VII. It is necessary to reduce to a minimum the negative impact which economic sanctions can have on innocent civilian populations and to address the issue of the adverse impact of sanctions on third countries.”*¹⁵⁸

- Mrs. Soledad Alvear Valenzuela, Minister for Foreign Affairs of Chile

As outlined in Chapter 2, the principle of proportionality requires that the consequences of a decision affecting the rights, entitlements and obligations of other parties must be proportional to the harm caused by that party and consistent with the overall objectives for which the decision is being taken. In the context of sanctions, proportionality requires that the coercive consequences of the application of sanctions remain in proportion to the threat to the peace posed by the target against which sanctions are imposed. In particular, the effects of sanctions upon innocent civilian populations and third States should be minimised.¹⁵⁹

¹⁵⁷ S/1995/1 (25 January 1995): *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, paragraph 70.

¹⁵⁸ Mrs. Soledad Alvear Valenzuela, Minister for Foreign Affairs of Chile: S/PV.4833 (24 September 2003), p. 22.

¹⁵⁹ The Heads of United Nations Member States recognized as much in the Millennium Declaration, by which they resolved: “to minimize the adverse effects of United Nations economic sanctions on innocent populations; to subject such sanctions régimes to regular reviews; and to eliminate the adverse effects of sanctions on third parties”. See: A/RES/55/2 (18 September 2000): *United Nations Millennium Declaration*, paragraph 9.

11.5.1 Proportionality and civilian populations: minimising the humanitarian impact of sanctions

U.N. sanctions have been heavily criticised due to their potential to devastate innocent civilian populations. They have been referred to as “a silent holocaust”,¹⁶⁰ as “the U.N.’s weapon of mass destruction”,¹⁶¹ as “modern siege warfare”,¹⁶² as a “genocidal tool”¹⁶³ and as “state-sanctioned murder”.¹⁶⁴ An increasing number of studies have sought to document the negative humanitarian and human rights impact of sanctions upon civilian populations.¹⁶⁵

¹⁶⁰ Arbuthnot, Felicity, ‘Dying of shame’ 298 *New Internationalist* (January/February 1998). This article can be found on-line at: <http://www.newint.org/issue298/Iraq.html> (last visited 20 July 2004).

¹⁶¹ See, e.g., Normand, Roger, “Sanctions against Iraq: new weapon of mass destruction” (1998) 64 *Covert Action* 4-10; Halliday, Denis J., “Iraq and the UN’s weapon of mass destruction” (1999) 98 *Current History* 65-8; Mueller, John & Mueller, Karl, “Sanctions of mass destruction” (1999) *Foreign Affairs*, v. 78, n.3, 43-53; Chomsky, Noam, Herman, Edward, Said, Edward, Zinn, Howard, et al., ‘Sanctions are Weapons of Mass Destruction’, in Armove, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA, 217-19.

¹⁶² Gordon, Joy, ‘Sanctions as siege warfare’ *The Nation*, March 22 1999. This article can be found on-line at: <http://www.globalpolicy.org/security/sanction/iraq1/iraq12.htm> (last visited 10 July 2004).

¹⁶³ Simons, Geoffrey L., *Imposing economic sanctions: legal remedy or genocidal tool?* (1999) Pluto Press, London. See also Bisharat, George E., ‘Sanctions as Genocide’ (2001) 11 *Transnational Law & Contemporary Problems* 379-425.

¹⁶⁴ Chomsky, Noam, Herman, Edward, Said, Edward, Zinn, Howard, et al., ‘Sanctions are Weapons of Mass Destruction’, in Armove, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA, 217-19, 218.

¹⁶⁵ For a study of the humanitarian impact of economic sanctions in general, see: Weiss, Thomas G., Cortright, David, Lopez, George A., & Minear, Larry (eds.), *Political Gain and Civilian Pain: humanitarian impacts of economic sanctions* (1997) Rowman & Littlefield, Lanham, MD, 91-147; United Nations Office for the Coordination of Humanitarian Affairs, *Coping with the Humanitarian Impact of Sanctions: an OCHA Perspective* (December 1998) UN Office for the Coordination of Humanitarian Affairs, New York.

For studies of the humanitarian impact of sanctions against Iraq, see: Center for Economic and Social Rights, *(UN) Sanctioned Suffering: a Human Rights Assessment of United Nations Sanctions on Iraq* (1996) Center for Economic and Social Rights, NY; UNICEF, *Results of the 1999 Iraq Child and Maternal Mortality Surveys* (1999) UNICEF, New York; Hoskins, Eric, ‘The Humanitarian Impacts of Economic Sanctions and War in Iraq’, in Weiss et al, *Political Gain and Civilian Pain*, 91-147; Pellett, Peter L., ‘Sanctions, Food, Nutrition, and Health in Iraq’, in Armove, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA, 185-203. For studies of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: Devin, Julia & Dashti-Gibson, Jaleh, ‘Sanctions in the Former Yugoslavia: Convolution Goals and Complicated

The most serious allegations regarding the humanitarian impact of sanctions have concerned the situation in Iraq. The Iraq sanctions have been accused of contributing to a “humanitarian catastrophe”,¹⁶⁶ including effects such as a tenfold increase in typhoid incidences between 1990 and 1991, and a fivefold increase in the mortality rate of children under five years of age between 1990 and 1995.¹⁶⁷ Perhaps the most alarming finding, based on a detailed analysis of child mortality rates in Iraq between 1960 and 1998, is that there may have been as many as 500,000 excess deaths among children under the age of five between 1991 and 1998.¹⁶⁸ The sanctions régimes against the Federal Republic of Yugoslavia (Serbia-Montenegro) and Haiti have also been accused of creating dire humanitarian consequences.¹⁶⁹

The question of precisely which consequences can be directly attributed to sanctions, as distinct from other potential contributing factors, is difficult to resolve with

Consequences’, in Weiss et al, *Political Gain and Civilian Pain*, 149-87. For studies of the Haiti régime, see: Gibbons, Elizabeth D., *Sanctions in Haiti: human rights and democracy under assault* (1999) Praeger, Westport, CT; Zaidi, Sarah, ‘Humanitarian Effects of the Coup and Sanctions in Haiti’, in Weiss et al, *Political Gain and Civilian Pain*, 189-212.

¹⁶⁶ Minear, Larry, Cortright, David, Wagler, Julia, Lopez, George A., & Weiss, Thomas G., *Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System* (1998) Thomas J. Watson Jr. Institute for International Studies, Providence, RI, xx.

¹⁶⁷ See: *ibid*; and Hoskins, ‘The Humanitarian Impacts of Economic Sanctions and War in Iraq’, above note 165, 120-1.

¹⁶⁸ UNICEF press release, ‘Iraq Survey Shows “Humanitarian Emergency”’ (12 August 1999). See also Pellett, ‘Sanctions, Food, Nutrition, and Health in Iraq’, above note 165, especially 195-7.

¹⁶⁹ With respect to the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro), see: Devin, 172 (charging that sanctions contributed to a serious deterioration in health conditions). With respect to the Haiti sanctions, see Minear et al., *Toward More Humane and Effective Sanctions Management*, above note 165, xxi-xxii (charging that sanctions caused malnutrition rates among under children five to rise from 50% to 61%); and Gibbons, Elizabeth D., *Sanctions in Haiti: human rights and democracy under assault* (1999) Praeger, Westport, CT, 23 (arguing that sanctions lifted the mortality rate of children between 1 and 4 from 56 to 61 per thousand).

absolute certainty.¹⁷⁰ Moreover, even in cases where it is beyond dispute that sanctions have caused suffering, those supporting the use of sanctions would argue that such suffering is primarily the responsibility of target leaders and policy-makers whose actions have threatened the peace and therefore led to the application of sanctions. Thus in the case of the Iraq sanctions, the argument was often made that the suffering of the Iraqi people was caused by Saddam Hussein, rather than by the Security Council and its Member States.¹⁷¹

As noted in Chapter 8, the Security Council has sought to address the negative impact of sanctions upon civilian populations through outlining exemptions, employing so-called “smart” or “targeted” sanctions, and by calling for humanitarian impact assessments.¹⁷² Each of these strategies has contributed to some extent to an overall decrease in the unintended consequences resulting from the application of sanctions. Nevertheless, there remains room for improvement.

As outlined in the section above on consistency, the Council’s approach has been quite inconsistent with respect to humanitarian exemptions. It has generally exempted medical supplies, although in the Iraq case such supplies were sometimes prevented from going ahead due to dual-use concerns. It has sometimes exempted foodstuffs completely,

¹⁷⁰ Hoskins acknowledges the difficulty of isolating the effects of sanctions from those of war in the case of Iraq: Hoskins, ‘The Humanitarian Impacts of Economic Sanctions and War in Iraq’, above note 165, 135 (“That Iraq has suffered severe humanitarian consequences from the gulf crisis is undeniable. Much less clear is the relative weight to be given to war versus economic sanctions. It is extremely difficult to separate the effects of sanctions from those of the forty-three-day bombing campaign and subsequent ground war”). Later, however, Hoskins concludes that with the passage of time, sanctions were increasingly responsible for sustaining the Iraqi emergency: at 137.

¹⁷¹ See, e.g., editorial, ‘The Suffering of Children’ (17 August 1999) *Washington Post*, A14 (“Saddam Hussein is not the first to use the suffering of children as an instrument of war, but he is surely distinctive in his manipulation of his country’s own children. His evident purpose in exploiting Iraq’s most vulnerable citizens is to advance his campaign against the embargo imposed by the United Nations for his invasion of Kuwait nearly 10 years ago. In this way, he has sacrificed his nation’s future in this grisly effort”).

¹⁷² See Chapter 8, section 8.4.1.

whilst at others doing so only in “humanitarian circumstances”. At times it has also provided exemptions for items such as clothing, petroleum and petroleum products, and educational equipment.

The Council increasing emphasis on “smart” or “targeted” sanctions is most welcome from the perspective of proportionality. Particularly positive has been its focus upon isolating components of a target’s economy that are considered to fuel conflict. Nevertheless, sometimes the proceeds from those economic resources, in addition to being put to that negative use of fuelling conflict, also sustain the development and welfare of innocent individuals and societies living in the areas connected with the target. Thus, even though such targeted measures result in less negative consequences for innocent civilians than those that would flow from the application of comprehensive sanctions, creative possibilities could nonetheless be explored in such situations to ensure that sanctions are applied with even fewer negative consequences.

With respect to humanitarian impact, the Council’s increased emphasis upon analysis of the humanitarian and socio-economic consequences of sanctions is to be lauded. Even here, however, there remains room for improvement. Such assessments are not yet called for as a matter of course, and when they are mandated, there is a lack of coherence and consistency.¹⁷³ This latter point is illustrated by the Council’s oversight of the Liberia II sanctions régime. In resolution 1478 (2003), the Security Council called upon two different actors – the Secretary-General and the Liberia II Panel of Experts – to undertake essentially the same task of providing humanitarian impact analysis of the sanctions imposed against

¹⁷³ The Stockholm process recommended that the Security Council should include regular humanitarian and socio-economic impact assessment in its sanctions monitoring procedures,

Liberia.¹⁷⁴ The reports that were submitted accordingly both provided interesting insights into the potential humanitarian and socio-economic consequences of the sanctions.¹⁷⁵ They differed substantially, however, employing different methodologies for assessment,¹⁷⁶ and provided diverging observations and recommendations.¹⁷⁷ Humanitarian impact assessments should be mandated as a matter of standard practice and they should follow a consistent methodology.

under established methodology: *Guidelines from the Stockholm Process*, above note 89, 27 (paragraph 50).

¹⁷⁴ S/RES/1478 (6 May 2003), operative paragraph 19 (requesting the Secretary-General to submit to it by 7 August 2003 a report on the possible humanitarian or socio-economic impact of the timber sanctions); S/RES/1478 (6 May 2003), operative paragraph 25(c) (requesting the Liberia II Panel of Experts to assess the possible humanitarian and socio-economic impact of the logging sanctions and to make recommendations for minimizing any such impact).

¹⁷⁵ See: S/2003/779 (7 August 2003), enclosure: *Report of the Panel of Experts pursuant to paragraph 25 of Security Council resolution 1478 (2003) concerning Liberia*; S/2003/793 (5 August 2003): *Report of the Secretary-General in pursuance of paragraph 19 of resolution 1478 (2003) concerning Liberia*.

¹⁷⁶ The methodology of the Panel of Experts focussed upon assessing the impact of the timber sanctions upon seven factors: (1) revenue and taxes; (2) employment; (3) indirect benefits; (4) social services; (5) human rights; (6) investment; and (7) environment. See: *Report of the Panel, ibid*, paragraphs 7-14. The Secretary-General's methodology, by contrast, concentrated upon indicators from the following sectors: (1) health; (2) food and nutrition; (3) education; (4) economic status; (5) governance; and (6) demography. See *Report of the Secretary-General, ibid*, paragraph 6.

¹⁷⁷ The Panel's observations included that the sanctions would: (a) deprive armed State and non-State actors of timber revenue; (b) result in decreased human rights violations associated with the timber industry; and (c) cause long-term consequences for the Liberia's redevelopment. See: *Report of the Panel, ibid*, paragraph 17. Its recommendations included that: (a) the Council should impose a moratorium on all commercial activities in the extractive industries; (b) increased emergency aid should be provided; (c) the Liberian timber sector should be reformed in order to achieve good governance; and (d) Member States, civil society and U.N. field presences should be encouraged to monitor and report sanctions violations. See: *Report of the Panel, ibid*, paragraph 17.

The Secretary-General's observations included that: (a) the timber sanctions would have an impact upon humanitarian and socio-economic conditions only once the security environment did not already preclude timber export; (b) a reconstituted timber industry exhibiting transparency and accountability could be a driving force for economic growth and sustainable development; and (c) that alternative sources of economic revenue should be explored, including rubber production, in order to avoid a situation where limited resources were exploited to fuel conflict. See *Report of the Secretary-General, ibid*, paragraph 48. His recommendations included that: (a) an exemption procedure should be developed to enable legitimate timber exports; (b) in that connection external auditing could be also explored; and (c) humanitarian and development programmes should be developed to reintegrate former timber workers. See *Report of the Secretary-General, ibid*, paragraphs 49-51.

11.5.2 Proportionality and third States: minimising the impact of sanctions upon third States

The impact of sanctions upon third States raises questions of proportionality not just with respect to the issue of the unintended consequences of sanctions, but also in terms of ensuring that the burden of sanctioning is distributed proportionally across the international community. The application of sanctions against a target State generally has a disproportionate effect upon the target's neighbour States and key trading partners. The sacrifice required of such States to implement sanctions is therefore significantly greater than that required of distant States with few ties to or relations with the target State.

As noted in Chapter 8, the Council has tended to respond to requests for assistance under Article 50 by appealing to States, international organizations and international financial institutions to extend assistance to the States in need of special assistance.¹⁷⁸ The initiative of appealing to various international actors to extend assistance to specially-affected States, whilst arguably better than taking no action at all, is nevertheless a largely symbolic action. Although the Council may claim that by taking such steps it is assisting such States, in practice its appeals have done little to distribute the economic burden of implementing sanctions evenly across the international community.

An expert group mandated by the Secretary-General to explore such possibilities recommended that an Article 50 trust fund be incorporated into the U.N.'s regular mandated budget, in the same manner as peacekeeping expenses.¹⁷⁹ The working group also proposed that, where significant requests for special assistance under Article 50 are

¹⁷⁸ See Chapter 8, section 8.4.2.

¹⁷⁹ A/53/312 (27 August 1998): Implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions, paragraph 46.

received, the Secretary-General could appoint a Special Representative to investigate the matter and make appropriate recommendations.¹⁸⁰ In addition, the group suggested that sanctions impact assessments should also address the potential impact of sanctions upon third States.¹⁸¹

The arguments in favour of more effective Council action to offset the burden are strong. First, the contention has been made that the Charter's recognition of a right to consult implies a corresponding obligation on the part of the Council to ensure that effective assistance is provided. Second, according to the principle of proportionality, the ability of sanctions to contribute to the rule of law is limited where they result in particularly disproportionate consequences for those who are expected to implement the law. Third, on a purely practical and pragmatic level, sanctions are unlikely to be effective where the costs of implementing sanctions are so prohibitive that it effectively becomes a matter of necessity to continue trading with a target.

11.5.3 Recommendations for ensuring greater proportionality in the use of sanctions

Of the five elements of the rule of law analysed here, the Security Council's track-record has – somewhat surprisingly – been strongest with respect to proportionality. The Council appears to have made a genuine attempt to improve the design of its sanctions régimes, with the aim of increasing their ability to target decision-makers and decreasing the unintended fall-out for innocent civilian populations. Nevertheless, while the Council has

¹⁸⁰ *Ibid*, paragraph 54.

¹⁸¹ *Ibid*, paragraph 50.

learned that it should act proportionately, it could still do more to minimize the negative consequences upon civilian populations and third States.

With respect to minimizing the impact of sanctions upon civilian populations, the Security Council could ensure that whenever it applies comprehensive sanctions it exempts a core group of items from the régime. Those goods should include, at a minimum, food, medical supplies, and educational equipment and supplies. As an alternative, the Council could embrace the Goods Review List model eventually employed in Iraq, according to which with all contraband items are explicitly noted on a list. Anything that does not feature on the Goods Review List could therefore be sold or supplied to the target.

The Security Council should also institutionalise the practice of requiring humanitarian impact assessment of all of its sanctions régimes. These assessments should occur in advance of the application of sanctions and then at regular intervals once sanctions are applied. The Council should ensure that its members have such assessments before them whenever they are reviewing a sanctions régime. In order to improve both the standard and consistency of humanitarian impact assessment, a specialized unit should be established and tasked with the responsibility of undertaking such assessments. The *ad hoc* practice to date of calling on different actors to perform impact assessments, including the Secretary-General, Sanctions Committees, Panels of Experts and Monitoring Mechanisms, is not conducive to obtaining a meaningful, sophisticated analysis of the negative consequences of sanctions. The question of causation is sufficiently complex that a consistent methodology should be employed to ascertain impact. Moreover, the body undertaking impact assessment should not be the same body that is tasked with improving sanctions

enforcement, as such a body is likely to focus upon how sanctions should be strengthened, rather than upon the negative humanitarian consequences of sanctions.

The Security Council could do considerably better at offsetting the negative consequences for third States and distributing the burden of implementation more evenly across the international community. The practice followed to date, of simply appealing to various international actors to provide assistance, does not amount to an effective remedy for specially-affected States. The end-result is that such States are faced with an unwelcome choice between implementing sanctions faithfully and thus bearing a burden that may cripple their economies, or turning a blind eye to sanctions violations. A creative solution must be found to this problem. At a minimum, the Security Council should undertake impact assessment of the potential special economic consequences of sanctions upon third States. It should also consider alternatives for ensuring an adequate funding base to compensate States experiencing significant economic difficulties as a result of complying with sanctions.

12. Concluding remarks and summary of practical recommendations

This thesis has explored the relationship between U.N. sanctions and the rule of law. In order to do so, it has traced the prehistory and development of the tool of U.N. sanctions, as well as the manner in which the U.N. sanctions system has evolved through the Security Council's creation and modification of U.N. sanctions régimes. It has proposed a basic, accountability-based model of the rule of law, consisting of five core elements which seek to prevent the abuse of power: transparency, consistency, equality, due process and proportionality. It has demonstrated how the Security Council's sanctions practice has largely failed to respect and promote those core elements of the rule of law. Finally, it has suggested a number of policy recommendations designed to modify the Security Council's sanctions practice so that U.N. sanctions can better promote, reinforce and strengthen the rule of law.

The Security Council has made a number of laudable innovations to its sanctions policy over the past decade, some of which have served to promote aspects of the rule of law. The general movement towards targeted rather than comprehensive sanctions is one example of these positive developments, resulting in an improved record with respect to the element of proportionality. But despite these positive developments, the U.N. sanctions system still exhibits substantial shortcomings with respect to each of the key elements of the rule of law. As the Council considers further reform to its sanctions policy, it should strive to improve its rule of law track-record. In the hope that the findings contained in this thesis might contribute to such a programme of reform, the key recommendations are reiterated below.

12.1 Increasing transparency

- Whenever possible the Security Council should hold its discussions concerning the potential or actual application of sanctions in public.
- Sanctions Committees should also meet in open session when possible. All formal Committee meetings should also become a matter of public record, with verbatim transcripts and/or summary records being released for public distribution. The Security Council could ensure that this takes place by so stipulating in its decisions outlining Committee mandates.
- When the Council votes on a draft resolution that seeks to impose or modify sanctions, Security Council Members should speak in explanation of their vote. The practice that has become prevalent, according to which the Council has imposed sanctions with little or no public discussion, should cease.
- When determining the existence of a threat to the peace, breach of the peace or act of aggression, the Council should identify as clearly as possible the precise nature and cause of the threat to the peace, breach of the peace or act of aggression.
- Where possible, such determinations should occur some time before sanctions are applied, in order to demonstrate that they are not mere determinations of convenience, made in order to justify the application of sanctions.
- Sanctions objectives should be linked to clear, objectively verifiable conditions, the occurrence of which will resolve the threat to the peace, breach of the peace or act of aggression and thus lead to the termination of sanctions.
- A central quality assurance unit could be tasked with ensuring that draft resolutions acknowledge the basis in the U.N. Charter for sanctions-related action, identify the precise nature of the relevant threat to the peace, breach of the peace or act of aggression, and articulate clear goals and objectively verifiable conditions for sanctions termination.

12.2 Improving consistency

- Standard phrases and terms should be employed in the Council's resolutions which outline the contours of each sanctions régime. The central quality assurance unit referred to above could be tasked with ensuring such consistency. It could also ensure consistency in the articulation of mandates for subsidiary actors.
- Sanctions-related subsidiary bodies should be centralised and consolidated. Instead of having a proliferation of *ad hoc* Sanctions Committees, Panels of Experts and Monitoring Mechanisms, the Council could establish a permanent General Sanctions Committee, with responsibility for ensuring administration of the Council's various sanctions régimes, as well as a General Sanctions Monitoring Panel, with responsibility for monitoring the Council's various sanctions régimes.

12.3 Promoting equality

- Permanent Members should be encouraged to use the veto only when absolutely essential.
- In order to minimise the veto's ability to undermine equality, closer alliances could be formed between the Elected 10. Such an alliance could be used in particular in order to ensure that sanctions are always imposed with a time-limit.

12.4 Providing due process

- Potential targets of sanctions should be afforded an opportunity to present their version of events. Where this is not possible, fact-finding missions should be tasked with the responsibility of presenting an objective assessment of the facts.
- When individuals stand to be deprived of access to their own personal property and livelihood, they should be provided with maximum due process.
- The Security Council should establish clear and transparent guidelines for determining which individuals are to be listed as targets. Such individuals should also be permitted to petition Sanctions Committees directly to protest their listing.
- Individuals subject to financial sanctions should be listed temporarily, pending genuine consideration of their situation by the relevant Sanctions Committee.

12.5. Ensuring proportionality

- If comprehensive sanctions are employed again, a core group of items should always be exempt, including food, medical supplies, and educational equipment and supplies. Alternatively, the Council could embrace a Goods Review List approach, listing explicitly all contraband items.
- Humanitarian impact assessments should be conducted for all sanctions régimes. These assessments should occur in advance of the application of sanctions and then at regular intervals once sanctions are applied. The Council should ensure that its members have such assessments before them whenever they are reviewing a sanctions régime.
- The standard and consistency of humanitarian impact assessment should be improved. A specialized unit could be established and tasked with responsibility for undertaking such assessments. The unit should not be the same body tasked with improving sanctions enforcement.
- The Security Council should also take effective action to offset the economic difficulties experienced by third States as a result of implementing sanctions. At a minimum it should mandate assessments of the potential impact of sanctions upon third States.

In the post-Cold War era, the U.N. Security Council has been able to employ its sanctions tool with unprecedented frequency. Drawing upon its growing sanctions experience, the Security Council has made valuable innovations to its sanctions policy. But unless the Council continues to embrace sanctions reform, and in particular innovations designed to promote, reinforce and strengthen the rule of law, its sanctions tool will struggle to attract the levels of compliance necessary to serve as an effective instrument for the maintenance of international peace and security. The Council has recently emphasized the importance of strengthening the rule of law in societies threatened by conflict. By taking simple steps to reform its sanctions practice, such as acting upon the policy recommendations outlined above, the Council can demonstrate its commitment to strengthening the rule of law in international society.

Tables

The tables listed below feature in the following pages:

- Table A: Security Council resolution provisions establishing and terminating U.N. sanctions régimes
- Table B: Security Council resolution provisions citing Chapter VII of the U.N. Charter as the basis for sanctions-related action
- Table C: Security Council resolution provisions outlining the scope of sanctions
- Table D: Security Council resolution provisions outlining Sanctions Committee mandates
- Table E: General and annual reports of the Sanctions Committees
- Table F: Security Council resolution provisions outlining the mandates of sanctions-related expert bodies
- Table G: Reports of sanctions-related expert bodies
- Table H: Security Council resolution provisions outlining the mandates of sanctions-related monitoring bodies
- Table I: Reports of sanctions-related monitoring bodies

A. Provisions establishing and terminating U.N. sanctions régimes

<i>Sanctions régime</i>	<i>Initiated</i>	<i>Terminated</i>
<i>Southern Rhodesia</i>	S/RES/232 (16 December 1966)	S/RES/460 (21 December 1979)
<i>South Africa</i>	S/RES/418 (4 November 1977)	S/RES/919 (25 May 1994)
<i>Iraq</i>	S/RES/661 (6 August 1991)	<i>Continuing</i>
<i>Former Yugoslavia</i>	S/RES/713 (25 September 1991)	[note verbale: SCA/96(4) (18 June 1996)]
<i>Somalia</i>	S/RES/733 (23 January 1992)	<i>Continuing</i>
<i>Libya</i>	S/RES/748 (31 March 1992)	S/RES/1506 (12 September 2003)
<i>Serbia-Montenegro (due to the situation in Bosnia-Herzegovina)</i>	S/RES/757 (30 May 1992)	S/RES/1074 (1 October 1996)
<i>Liberia</i>	S/RES/788 (19 November 1992)	S/RES/1343 (7 March 2001)
<i>The Bosnian Serbs</i>	S/RES/820 (17 April 1993)	S/RES/1074 (1 October 1996)
<i>Haiti</i>	S/RES/841 (15 June 1993)	S/RES/944 (16 October 1994)
<i>Angola (UNITA)</i>	S/RES/864 (15 September 1993)	S/RES/1448 (9 December 2002)
<i>Rwanda</i>	S/RES/918 (17 May 1994)	<i>Continuing</i>
<i>The Sudan</i>	S/RES/1054 (11 March 1996)	S/RES/1372 (28 September 2001)
<i>Sierra Leone</i>	S/RES/1132 (8 October 1997)	<i>Continuing</i>
<i>Serbia-Montenegro (due to the situation in Kosovo)</i>	S/RES/1160 (31 March 1998)	S/RES/1367 (10 September 2001)
<i>Afghanistan/Taliban/Al Qaida</i>	S/RES/1267 (15 October 1999)	<i>Continuing</i>
<i>Eritrea and Ethiopia</i>	S/RES/1298 (17 May 2000)	S/PRST/2001/14 (15 May 2001)
<i>Liberia</i>	S/RES/1343 (7 March 2001)	S/RES/1521 (22 December 2003)
<i>DRC</i>	S/RES/1493 (28 July 2003)	<i>Continuing</i>
<i>Liberia</i>	S/RES/1521 (22 December 2003)	<i>Continuing</i>

B. Provisions citing Chapter VII of the U.N. Charter as the basis for sanctions-related action

<i>Sanctions régime</i>	<i>Provisions invoking Chapter VII</i>
<i>Southern Rhodesia</i>	S/RES/232 (16 December 1966), preambular paragraph 4. ¹ S/RES/253 (29 May 1968), preambular paragraph 10. S/RES/277 (18 March 1970), preambular paragraph 7. S/RES/388 (6 April 1976), preambular paragraph 5. S/RES/409 (27 May 1977), preambular paragraph 5.
<i>South Africa</i>	S/RES/418 (4 November 1977), preambular paragraph 10. S/RES/919 (25 May 1994), operative paragraph 1.
<i>Iraq</i>	S/RES/661 (6 August 1990), preambular paragraph 7. S/RES/666 (13 September 1990), preambular paragraph 6. S/RES/670 (25 September 1990), preambular paragraph 13. S/RES/687 (3 April 1991), preambular paragraph 26. S/RES/986 (14 April 1995), preambular paragraph 6. S/RES/1137 (12 November 1997), preambular paragraph 12. S/RES/1409 (14 May 2002), preambular paragraph 6. S/RES/1483 (22 May 2003), preambular paragraph 18. S/RES/1518 (24 November 2003), preambular paragraph 5. S/RES/1546 (8 June 2004), preambular paragraph 21.
<i>All states that were part of the Former Yugoslavia</i>	S/RES/713 (25 September 1991), operative paragraph 6. S/RES/1021 (22 November 1995), preambular paragraph 6. S/RES/1031 (15 December 1995), preambular paragraph 10.
<i>Somalia</i>	S/RES/733 (23 January 1992), operative paragraph 5. S/RES/1356 (19 June 2001), preambular paragraph 4. S/RES/1425 (22 July 2002), preambular paragraph 6. S/RES/1474 (8 April 2003), preambular paragraph 8. S/RES/1519 (16 December 2003), preambular paragraph 9.
<i>Libya</i>	S/RES/748 (31 March 1992), preambular paragraph 10. S/RES/883 (11 November 1993), preambular paragraph 10. S/RES/1192 (27 August 1998), preambular paragraph 5. S/RES/1506 (12 September 2003), preambular paragraph 5.
<i>Serbia-Montenegro (to address the situation in Bosnia-Herzegovina)</i>	S/RES/757 (30 May 1992), preambular paragraph 18. S/RES/760 (18 June 1992), preambular paragraph 2. S/RES/787 (16 November 1992), operative paragraphs 9-10. S/RES/820 (17 April 1993), section B, preambular paragraph 2. S/RES/943 (23 September 1994), preambular paragraph 10. S/RES/967 (14 December 1994), preambular paragraph 3. S/RES/992 (11 May 1995), preambular paragraph 6. S/RES/1074 (1 October 1996), preambular paragraph 9.
<i>Liberia</i>	S/RES/788 (19 November 1992), operative paragraph 8. S/RES/1343 (7 March 2001), preambular paragraph 10.
<i>The Bosnian Serbs</i>	S/RES/820 (17 April 1993), section B, preambular paragraph 2. S/RES/942 (23 September 1994), preambular paragraph 8. S/RES/1074 (1 October 1996), preambular paragraph 9.
<i>Haiti</i>	S/RES/841 (15 June 1993), preambular paragraph 15. S/RES/861 (27 August 1993), preambular paragraph 7. S/RES/873 (13 October 1993), preambular paragraph 5. S/RES/917 (6 May 1994), preambular paragraph 14. S/RES/944 (16 October 1994), operative paragraph 4.

¹ In the resolution initiating the Southern Rhodesian sanctions régime, the Council explicitly invoked Articles 39 and 41 of the Charter, rather than the more general Chapter VII.

Angola (UNITA)	S/RES/864 (15 September 1993), section B, preambular paragraph 5. S/RES/1127 (28 August 1997), section B, preambular paragraph 2. S/RES/1130 (29 September 1997), preambular paragraph 3. S/RES/1173 (12 June 1998), section B, preambular paragraph 3. S/RES/1176 (24 June 1998), preambular paragraph 4. S/RES/1412 (17 May 2002), preambular paragraph 9. S/RES/1432 (15 August 2002), preambular paragraph 8. S/RES/1439 (18 October 2002), preambular paragraph 8. S/RES/1448 (9 December 2002), preambular paragraph 5.
Rwanda	S/RES/918 (17 May 1994), section B, preambular paragraph 2. S/RES/1005 (17 July 1995), preambular paragraph 6. S/RES/1011 (16 August 1995), section B, sole preambular paragraph.
The Sudan	S/RES/1054 (11 March 1996), preambular paragraph 11. S/RES/1070 (16 August 1996), preambular paragraph 12. S/RES/1372 (28 September 2001), preambular paragraph 7.
Sierra Leone	S/RES/1132 (8 October 1997), preambular paragraph 10. S/RES/1156 (16 March 1998), preambular paragraph 3. S/RES/1171 (5 June 1998), preambular paragraph 4. S/RES/1299 (19 May 2000), operative paragraph 3. S/RES/1306 (5 July 2000), preambular paragraph 5. S/RES/1385 (19 December 2001), preambular paragraph 10. S/RES/1446 (4 December 2002), preambular paragraph 10.
Federal Republic of Yugoslavia (to address the situation in Kosovo)	S/RES/1160 (31 March 1998), preambular paragraph 8. S/RES/1203 (24 October 1998), preambular paragraph 16. S/RES/1244 (10 June 1999), preambular paragraph 13. S/RES/1367 (10 September 2001), preambular paragraph 5.
Afghanistan/Taliban/Al Qaida	S/RES/1267 (15 October 1999), preambular paragraph 10. S/RES/1333 (19 December 2000), preambular paragraph 19. S/RES/1388 (15 January 2001), preambular paragraph 3. S/RES/1390 (16 January 2002), preambular paragraph 10. S/RES/1452 (20 December 2002), preambular paragraph 4. S/RES/1455 (17 January 2003), preambular paragraph 8. S/RES/1526 (30 January 2004), preambular paragraph 8.
Eritrea and Ethiopia	S/RES/1298 (17 May 2000), preambular paragraph 14. S/RES/1320 (15 September 2000), operative paragraph 5.
Liberia II	S/RES/1343 (7 March 2001), preambular paragraph 10. S/RES/1408 (6 May 2002), preambular paragraph 12. S/RES/1478 (6 May 2003), preambular paragraph 14. S/RES/1509 (19 September 2003), preambular paragraph 22. S/RES/1521 (22 December 2003), preambular paragraph 9.
DRC	S/RES/1493 (28 July 2003), preambular paragraph 12. S/RES/1533 (12 March 2004), preambular paragraph 8.
Liberia III	S/RES/1521 (22 December 2003), preambular paragraph 9. S/RES/1532 (12 March 2004), preambular paragraph 6.

C. Provisions outlining the scope of sanctions

<i>Sanctions régime</i>	<i>Provisions establishing or modifying the scope of sanctions</i>
<i>Southern Rhodesia</i>	S/RES/232 (16 December 1966), operative paragraph 2. S/RES/253 (29 May 1968), operative paragraphs 3-6. S/RES/277 (18 March 1970), operative paragraphs 2, 9. S/RES/388 (6 April 1976), operative paragraphs 1, 2. S/RES/409 (27 May 1977), operative paragraph 1.
<i>South Africa</i>	S/RES/418 (4 November 1977), operative paragraphs 2, 4. S/RES/919 (25 May 1994), operative paragraph 1.
<i>Iraq</i>	S/RES/661 (6 August 1990), operative paragraphs 3-4. S/RES/666 (13 September 1990) operative paragraphs 1, 5, 8. S/RES/670 (25 September 1990), operative paragraphs 3-6. S/RES/687 (3 April 1991), operative paragraphs 20, 23-4. S/RES/706 (15 August 1991), operative paragraphs 1-2. S/RES/778 (2 October 1992), operative paragraph 1. S/RES/986 (14 April 1995), operative paragraphs 1-2, 7-10. S/RES/1137 (12 November 1997), operative paragraph 4. S/RES/1409 (14 May 2002), operative paragraph 2. S/RES/1454 (30 December 2002), operative paragraph 1. S/RES/1483 (22 May 2003), operative paragraphs 10, 23. S/RES/1546 (8 June 2004), operative paragraph 21.
<i>All states that were part of the Former Yugoslavia</i>	S/RES/713 (25 September 1991), operative paragraph 6. S/RES/727 (8 January 1992), operative paragraph 6. S/RES/743 (21 February 1992), operative paragraph 11. S/RES/1031 (15 December 1995), operative paragraph 22.
<i>Somalia</i>	S/RES/733 (23 January 1992), operative paragraph 5. S/RES/1356 (19 June 2001), operative paragraphs 2-4. S/RES/1425 (22 July 2002), operative paragraphs 1-2.
<i>Libya</i>	S/RES/748 (31 March 1992), operative paragraphs 4-6. S/RES/883 (11 November 1993), operative paragraphs 3-6. S/RES/1192 (27 August 1998), operative paragraph 8. S/PRST/1998/10 (8 April 1999) <i>Presidential Statement of 8 April 1999</i> . S/RES/1506 (12 September 2003), operative paragraph 1.
<i>Serbia-Montenegro (to address the situation in Bosnia-Herzegovina)</i>	S/RES/757 (30 May 1992), operative paragraphs 4-8. S/RES/760 (18 June 1992), sole operative paragraph. S/RES/787 (16 November 1992), operative paragraph 9. S/RES/820 (17 April 1993), operative paragraphs 15-16, 21, 23-5, 27-8. S/RES/943 (23 September 1994), operative paragraph 1. S/RES/967 (14 December 1994), operative paragraph 1. S/RES/992 (11 May 1995), operative paragraph 1. S/RES/1074 (1 October 1996), operative paragraph 2.
<i>Liberia</i>	S/RES/788 (19 November 1992), operative paragraph 8. S/RES/1343 (7 March 2001), operative paragraph 1.
<i>The Bosnian Serbs</i>	S/RES/820 (17 April 1993), operative paragraph 12. S/RES/942 (23 September 1994), operative paragraphs 7, 11-15. S/RES/1022 (22 November 1995), operative paragraphs 2-3. S/RES/1074 (1 October 1996), operative paragraph 2.
<i>Haiti</i>	S/RES/841 (15 June 1993), operative paragraphs 5, 7-8. S/RES/861 (27 August 1993), operative paragraph 1. S/RES/917 (6 May 1994), operative paragraphs 2-3, 6-8. S/RES/944 (29 September 1994), operative paragraph 4. S/RES/948 (15 October 1995), operative paragraphs 1, 10.
<i>Angola (UNITA)</i>	S/RES/864 (15 September 1993), operative paragraph 19. S/RES/1127 (28 August 1997), operative paragraphs 4-5.

	S/RES/1130 (29 September 1997), operative paragraph 2. S/RES/1173 (12 June 1998), operative paragraphs 11-12. S/RES/1176 (24 June 1998), operative paragraph 2. S/RES/1412 (17 May 2002), operative paragraph 1. S/RES/1432 (15 August 2002), operative paragraph 1. S/RES/1439 (18 October 2002), operative paragraph 1. S/RES/1448 (9 December 2002), operative paragraph 2.
Rwanda	S/RES/918 (17 May 1994), operative paragraph 13. S/RES/1011 (16 August 1995), operative paragraphs 7-8, 11.
The Sudan	S/RES/1054 (11 March 1996), operative paragraph 3. S/RES/1070 (16 August 1996), operative paragraph 3. S/RES/1372 (28 September 2001), operative paragraph 1.
Sierra Leone	S/RES/1132 (8 October 1997), operative paragraphs 5-6. S/RES/1156 (16 March 1998), operative paragraph 2. S/RES/1171 (5 June 1998), operative paragraphs 1-5. S/RES/1306 (5 July 2000), operative paragraphs 1, 5-6. S/RES/1385 (19 December 2001), operative paragraph 3. S/RES/1446 (4 December 2002), operative paragraph 2.
Federal Republic of Yugoslavia (to address the situation in Kosovo)	S/RES/1160 (31 March 1998), operative paragraph 8. S/RES/1203 (24 October 1998), operative paragraph 15. S/RES/1244 (10 June 1999), operative paragraph 16. S/RES/1367 (10 September 2001), operative paragraph 1.
Afghanistan/Taliban/Al Qaida	S/RES/1267 (15 October 1999), operative paragraph 4. S/RES/1333 (19 December 2000), operative paragraphs 5, 8, 10-11. S/RES/1388 (15 January 2001), operative paragraphs 1-2. S/RES/1390 (16 January 2002), operative paragraphs 1-2. S/RES/1452 (20 December 2002), operative paragraphs 1-2. S/RES/1526 (30 January 2004), operative paragraph 1.
Eritrea and Ethiopia	S/RES/1298 (17 May 2000), operative paragraph 6. S/RES/1312 (31 July 2000), operative paragraph 5. S/RES/1320 (15 September 2000), operative paragraph 10. S/PRST/2001/14 (15 May 2001): <i>Presidential statement of 15 May 2001.</i>
Liberia II	S/RES/1343 (7 March 2001), operative paragraphs 5-7. S/RES/1408 (6 May 2002), operative paragraph 5. S/RES/1478 (6 May 2003), operative paragraph 10, 17, 28. S/RES/1509 (19 September 2003), operative paragraph 12. S/RES/1521 (22 December 2003), operative paragraph 1.
DRC	S/RES/1493 (28 July 2003), operative paragraph 20.
Liberia III	S/RES/1521 (22 December 2003), operative paragraphs 2, 4, 6, 10. S/RES/1532 (12 March 2004), operative paragraphs 1-3.

D. Provisions outlining Sanctions Committee mandates

<i>Sanctions Committee</i>	<i>Provisions establishing, modifying or dissolving the Committee's mandate</i>
253 Committee <i>(Southern Rhodesia)</i>	<p>Established: S/RES/253 (29 May 1968), operative paragraph 20.</p> <p>Modified: S/RES/277 (18 March 1970), operative paragraph 21. S/RES/314 (28 February 1972), operative paragraph 6. S/RES/320 (29 September 1972), operative paragraphs 4-5. S/RES/326 (2 February 1973), operative paragraph 8. S/RES/328 (10 March 1973), operative paragraph 6. S/RES/409 (27 May 1977), operative paragraph 3. S/RES/411 (30 June 1977), operative paragraph 12. S/RES/445 (8 March 1979), operative paragraph 8.</p> <p>Dissolved: S/RES/460 (21 December 1979), operative paragraph 3.</p>
421 Committee <i>(South Africa)</i>	<p>Established: S/RES/421 (9 December 1977), operative paragraph 1.</p> <p>Modified: S/RES/473 (13 June 1980), operative paragraph 11. S/RES/591 (28 November 1986), operative paragraph 13.</p> <p>Dissolved: S/RES/919 (25 May 1994), operative paragraph 3.</p>
661 Committee <i>(Iraq)</i>	<p>Established: S/RES/661 (6 August 1990), operative paragraph 6.</p> <p>Modified: S/RES/666 (13 September 1990), operative paragraphs 1, 5. S/RES/669 (24 September 1990), preambular paragraph 4. S/RES/687 (3 April 1991), operative paragraphs 20, 23. S/RES/700 (17 June 1991), operative paragraph 5. S/RES/715 (11 October 1991), operative paragraph 7. S/RES/986 (14 April 1995), operative paragraphs 1, 6, 12. S/RES/1051 (27 March 1996), operative paragraph 10. S/RES/1111 (4 June 1997), operative paragraphs 4, 5. S/RES/1143 (4 December 1997), operative paragraphs 5, 9. S/RES/1153 (20 February 1998), operative paragraphs 3, 14, 15. S/RES/1175 (19 June 1998), operative paragraph 2. S/RES/1210 (4 November 1998), operative paragraphs 3, 10. S/RES/1242 (21 May 1999), operative paragraph 10. S/RES/1281 (10 December 1999), operative paragraph 10. S/RES/1284 (17 December 1999), operative paragraphs 17-18, 25. S/RES/1302 (8 June 2000), operative paragraphs 6, 8. S/RES/1330 (5 December 2000), operative paragraphs 6, 10, 13. S/RES/1360 (3 July 2001), operative paragraph 6. S/RES/1409 (14 May 2002), operative paragraph 7. S/RES/1454 (30 December 2002), operative paragraph 2. S/RES/1472 (28 March 2003), operative paragraphs 4, 7, 9.</p> <p>Dissolved: S/RES/1483 (22 May 2003), operative paragraph 29 ("terminated" effective six months from the date of adoption of that resolution).</p>
724 Committee <i>(Former Yugoslavia, Federal Republic of Yugoslavia (Serbia-Montenegro), and Bosnian Serbs)</i>	<p>Established: S/RES/724 (15 December 1991), operative paragraph 5(b).</p> <p>Responsibilities concerning the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro): S/RES/757 (30 May 1992), operative paragraph 13. S/RES/787 (16 November 1992), operative paragraph 9. S/RES/820 (17 April 1993), operative paragraphs 18, 22, 27-8. S/RES/843 (18 June 1993), operative paragraph 2. S/RES/943 (23 September 1994), operative paragraph 2. S/RES/970 (12 January 1995), operative paragraph 4. S/RES/988 (21 April 1995), operative paragraphs 11, 12. S/RES 1022 (22 November 1995), operative paragraph 8.</p> <p>Responsibilities concerning the Bosnian Serb sanctions régime: S/RES/942 (23 September 1994), operative paragraphs 7, 13-15.</p> <p>Dissolved: S/RES/1074 (1 October 1996), operative paragraph 6.</p>

748 Committee (Libya)	Established: S/RES/748 (31 March 1992), operative paragraph 9. Modified: S/RES/883 (11 November 1993), operative paragraphs 9, 10. Dissolved: S/RES/1506 (12 September 2003), operative paragraph 2.
751 Committee (Somalia)	Established: S/RES/751 (24 April 1992), operative paragraph 11. Modified: S/RES/954 (4 November 1994), operative paragraph 12. S/RES/1356 (19 June 2001), operative paragraph 4. S/RES/1407 (3 May 2002), operative paragraphs 2, 7. S/RES/1474 (8 April 2003), operative paragraph 8. S/RES/1519 (16 December 2003), operative paragraph 8.
841 Committee (Haiti)	Established: S/RES/841 (16 June 1993), operative paragraph 10. Modified: S/RES/917 (6 May 1994), operative paragraph 14. Dissolved: S/RES/948 (15 October 1995), operative paragraph 10.
864 Committee (UNITA)	Established: S/RES/864 (15 September 1993), operative paragraph 22. Modified: S/RES/1127 (28 August 1997), operative paragraph 11. S/RES/1173 (12 June 1998), operative paragraphs 13, 20. S/RES/1221 (12 January 1999), operative paragraphs 8, 9. S/RES/1237 (7 May 1999), operative paragraph 7. S/RES/1295 (18 April 2000), operative paragraph 24. S/RES/1336 (23 January 2001), operative paragraph 6. S/RES/1348 (19 April 2001), operative paragraph 6. S/RES/1374 (19 October 2001), operative paragraphs 4, 8. S/RES/1404 (18 April 2002), operative paragraph 7. S/RES/1439 (18 October 2002), operative paragraph 6. Dissolved: S/RES/1448 (9 December 2002), operative paragraph 3.
918 Committee (Rwanda)	Established: S/RES/918 (17 May 1994), operative paragraph 14. Modified: S/PRST/1995/22 (27 April 1995): <i>Presidential statement of 27 April 1995.</i> S/RES/1005 (17 July 1995), sole operative paragraph. S/RES/1011 (16 August 1995), operative paragraph 11.
985 Committee (Liberia I)	Established: S/RES/985 (13 April 1995), operative paragraph 4. Modified: S/PRST/1999/1 (7 January 1999): <i>Presidential statement of 7 January 1999.</i> Dissolved: S/RES/1343 (7 March 2001), operative paragraph 1.
1132 Committee (Sierra Leone)	Established: S/RES/1132 (8 October 1997), operative paragraphs 9, 10. Modified: S/RES/1171 (5 June 1998), operative paragraphs 4, 6. S/PRST/1999/1 (7 January 1999): <i>Presidential statement of 7 January 1999.</i> S/RES/1306 (5 July 2000), operative paragraphs 4-5, 7, 12, 17, 22-3. S/RES/1446 (4 December 2002), operative paragraph 4.
1160 Committee (Federal Republic of Yugoslavia)	Established: S/RES/1160 (31 March 1998), operative paragraph 9. Dissolved: S/RES/1367 (10 September 2001), operative paragraph 2.
1267 Committee (Afghanistan/Taliban/ Al Qaida)	Established: S/RES/1267 (15 October 1999), operative paragraphs 6, 12. Modified: S/RES/1333, operative paragraph 16. S/RES/1363 (30 July 2001), operative paragraphs 3, 6. S/RES/1390 (16 January 2002), operative paragraph 5. S/RES/1452 (20 December 2002), operative paragraphs 1, 3. S/RES/1455 (17 January 2003), operative paragraphs 4, 9, 11, 14-15. S/RES/1526 (30 January 2004), operative paragraphs 2, 7, 10-13, 21, 23.
1298 Committee (Eritrea and Ethiopia)	Established: S/RES/1298 (17 May 2000), operative paragraphs 8, 13. Dissolved: S/PRST/2001/14 (15 May 2001) <i>Presidential statement of 15 May 2001.</i>
1343 Committee (Liberia II)	Established: S/RES/1343 (7 March 2001), operative paragraph 14. Modified: S/RES/1408 (6 May 2002), operative paragraphs 13, 14. S/RES/1478 (6 May 2003), operative paragraphs 24, 29. Dissolved: S/RES/1521 (22 December 2003), operative paragraph 1.

<i>1518 Committee (Iraq)</i>	Established: S/RES/1518 (24 November 2003), operative paragraphs 1-3.
<i>1521 Committee (Liberia III)</i>	Established: S/RES/1521 (22 December 2003), operative paragraph 21. S/RES/1532 (12 March 2004), operative paragraph 4.
<i>1533 Committee (DRC)</i>	Established: S/RES/1533 (12 March 2004), operative paragraphs 8, 9.

E. Sanctions Committee annual reports¹

<i>Sanctions Committee</i>	<i>Annual and General Reports</i>
253 Committee <i>(Southern Rhodesia)</i>	<p>S/8954 (30 December 1968): <i>Report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 23rd year, Supplement for October, November and December 1968, pp. 181-295.</i></p> <p>S/9252 (12 and 13 June 1969): <i>Second report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 24th year, Supplement for April, May and June 1969, pp. 195-329.</i></p> <p>S/9844 and Corr.1-2 (15 June 1970): <i>Third report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 25th year, Special Supplement No. 3.</i></p> <p>S/10229 & Add.1 (16 June & 13 July 1971): <i>Fourth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 26th year, Special Supplements 2 & 2A.</i></p> <p>S/10852 & Add.1-2 (22 and 31 December 1972 & 2 February 1973): <i>Fifth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 27th year, Special Supplement No. 2.</i></p> <p>S/11178 and Rev. 1 (3 January 1974): <i>Sixth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 29th year, Special Supplement Nos 2, 2A.</i></p> <p>S/11594 and Rev. 1 (9 and 10 January 1975): <i>Seventh report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia: SCOR, 30th year, Special Supplement No. 2, Vols I-II.</i></p> <p>S/11927 & Add.1 (8 January and 6 February 1976): <i>Eighth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia: SCOR, 31st year, Special Supplement No. 2, Vols I-II.</i></p> <p>S/12265 (21 December 1976): <i>Ninth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia: SCOR, 32nd year, Special Supplement, No. 2, Vols. I-III.</i></p> <p>S/12529 & Add.1 (1 March 1978): <i>Tenth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia: SCOR, 33rd year, Special Supplement No. 2, Vols. I, II.</i></p> <p>S/13000 (11 January 1979): <i>Eleventh report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia: SCOR, 34th year, Special Supplement No. 2, Vols. I-III.</i></p>

¹ As noted in Chapter 9, the practice of issuing annual reports was introduced following the Note by the President of the Security Council dated 29 March 1995. See: S/1995/234 (29 March 1995): *Note by the President of the Security Council* (suggesting the introduction of improvements to make the procedures of the Sanctions Committees more transparent). The reports dating from prior to 1995 are therefore general reports submitted by the relevant Committee on its activities.

	S/13750 (15 January 1980): <i>Twelfth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia: SCOR, 35th year, Special Supplement No. 2, Vols. I-III.</i>
421 Committee (South Africa)	S/13708 (26 December 1979): <i>Report of the Security Council Committee established pursuant to resolution 421 (1977) concerning South Africa on nuclear collaboration with South Africa.</i> S/13721 (31 December 1979): <i>Report of the Security Council Committee established pursuant to resolution 421 (1977) concerning South Africa, SCOR, 35th year, supplement for July, August and September 1980.</i> S/14179 (19 September 1980): <i>Report of the Security Council Committee established pursuant to resolution 421 (1977) concerning South Africa on ways and means of making the mandatory arms embargo against South Africa more effective.</i> S/21015 (11 December 1989) annex: <i>Report of the Security Council Committee established pursuant to resolution 421 (1977) concerning South Africa (on the Committee's activities from 1980-1989).</i>
661 Committee (Iraq)	S/1996/700 (26 August 1996), annex. S/1997/672 (28 August 1997), annex. S/1998/1239 (31 December 1998), annex. S/2000/133 (18 February 2000), annex. S/2001/738 (27 July 2001), annex. S/2002/647 (10 June 2002), annex. S/2003/300 (12 March 2003), annex.
724 Committee² (Yugoslavia)	S/23800 (13 April 1992). S/25027 (30 December 1992). S/1996/946 (15 November 1996), annex.
748 Committee (Libya)	S/1996/2 (2 January 1996), annex. S/1996/1079 (31 December 1996), annex. S/1997/1030 (31 December 1997), annex. S/1998/1237 (31 December 1998), annex. S/1999/1299 (31 December 1999), annex. The 748 Committee issued no annual reports for 2000, 2001 or 2002
751 Committee (Somalia)	S/1996/17 (16 January 1996), annex. S/1997/16 (7 January 1997), annex. S/1998/1226 (28 December 1998), annex. S/1999/1283 (28 December 1999), annex. S/2000/1226 (21 December 2000), annex. S/2001/1259 (26 December 2001), annex. S/2002/1430 (30 December 2002), annex. S/2003/1216 (31 December 2003), annex.
841 Committee (Haiti)	No reports issued.
864 Committee (UNITA)	S/1996/37 (17 January 1996), annex. S/1997/33 (14 January 1997), annex. S/1997/1027 (31 December 1997), annex. S/1998/1227 (28 December 1998), annex. S/2000/83 (3 February 2000), annex. S/2000/1255 (29 December 2000), annex. S/2002/243 (7 March 2002), annex.

² The 724 Committee was granted responsibilities relating to the sanctions régimes against the former Yugoslavia, the Federal Republic of Yugoslavia (Serbia-Montenegro), and the Bosnian Serbs.

	S/2002/1413 (24 December 2002), annex.
918 Committee (Rwanda)	S/1996/82 (2 February 1996), annex. S/1997/15 (7 January 1997), annex. S/1997/1028 (31 December 1997), annex. S/1998/1219 (24 December 1998), annex. S/1999/1292 (30 December 1999), annex. S/2000/1227 (22 December 2000), annex. S/2002/49 (14 January 2002), annex. S/2002/1406 (24 December 2002), annex. S/2004/134 (20 February 2004), annex.
985 Committee (Liberia I)	S/1996/72 (30 January 1996), annex. S/1996/1077 (31 December 1996), annex. S/1997/1026 (31 December 1997), annex. S/1998/1220 (24 December 1998), annex. S/1999/1301 (31 December 1999), annex. S/2000/1233 (22 December 2000), annex.
1132 Committee (Sierra Leone)	S/1998/1236 (31 December 1998), annex. S/1999/1300 (31 December 1999), annex. S/2000/1238 (26 December 2000), annex. S/2002/50 (14 January 2002), annex. S/2002/1414 (24 December 2002), annex. S/2004/166 (27 February 2004), annex.
1160 Committee (Federal Republic of Yugoslavia)	S/1999/216 (4 March 1999), annex. S/2000/633 (29 June 2000), annex. S/2001/102 (5 February 2001), annex. S/2001/931 (3 October 2001), annex.
1267 Committee (Afghanistan/Taliban/ Al Qaida)	S/2000/1254 (29 December 2000), annex. S/2002/101 (5 February 2002), annex. S/2002/1423 (26 December 2002), annex.
1298 Committee (Eritrea and Ethiopia)	S/2000/1259 (29 December 2000), annex. S/2001/503 (18 May 2001), annex.
1343 Committee (Liberia II)	S/2002/83 (18 January 2002), annex. S/2002/1394 (20 December 2002), annex.
1518 Committee (Iraq)	Yet to issue any annual reports.
1521 Committee (Liberia III)	S/2004/139 (25 February 2004), annex.
1533 Committee (DRC)	Yet to issue any annual reports.

F. Provisions outlining expert body mandates

<i>Expert Body</i>	<i>Provisions establishing, modifying or re-establishing the Body's mandate</i>
<i>Group of Experts on Iraqi oil</i>	Established: S/RES/1153 (20 February 1998), operative paragraph 12.
<i>Ad hoc panels of experts on the Iraq sanctions régime</i>	Established: S/1999/100: Note by the President of the Security Council (30 January 1999).
<i>The UNITA Panel of Experts</i>	Established: S/RES/1237 (7 May 1999), operative paragraph 6.
<i>The Sierra Leone Panel of Experts</i>	Established: S/RES/1306 (5 July 2000), operative paragraph 19.
<i>The Taliban & Al Qaida Committee of Experts</i>	Established: S/RES/1333 (19 December 2000), operative paragraph 15.
<i>The Liberia II Panel(s) of Experts</i>	Established: S/RES/1343 (7 March 2001), operative paragraph 19. Re-established: S/RES/1395 (27 February 2002), operative paragraph 3. Established: S/RES/1408 (6 May 2002), operative paragraph 16. Re-established: S/RES/1458 (28 January 2003), operative paragraph 3. Established: S/RES/1478 (6 May 2003), operative paragraph 25.
<i>The Somalia Team of Experts</i>	Established: S/RES/1407 (3 May 2002), operative paragraph 1.
<i>The Somalia Panel of Experts</i>	Established: S/RES/1425 (22 July 2002), operative paragraph 3. Re-established: S/RES/1474 (8 April 2003), operative paragraph 3.
<i>The Liberia III Panel of Experts</i>	Established: S/RES/1521 (22 December 2003), operative paragraph 22. Re-established: S/RES/1549 (17 June 2004), operative paragraph 1.
<i>The DRC Panel of Experts</i>	Established: S/RES/1533 (12 March 2004), operative paragraph 10.

G. Reports by expert bodies

Expert Body	Reports
Group of Experts on Iraqi oil	S/1998/330 (15 April 1998), annex: <i>Report of the group of experts established pursuant to paragraph 12 of Security Council resolution 1153 (1998).</i>
Ad hoc panels of experts on the Iraq sanctions régime	S/1999/356 (30 March 1999), Annex I: <i>Report of the First Panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) concerning disarmament and current and future ongoing monitoring and verification issues.</i> S/1999/356 (30 March 1999), Annex II: <i>Report of the Second Panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) concerning the current humanitarian situation in Iraq.</i> S/1999/356 (30 March 1999), Annex III: <i>Report of the Third Panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) on prisoners of war and Kuwaiti property.</i>
UNITA Panel of Experts	S/1999/1016 (30 September 1999), annex: <i>Interim report of the Expert Panel established by the Security Council in resolution 1237 (1999) of 7 May 1999.</i> S/2000/203 (10 March 2000), annex I, enclosure: <i>Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA.</i>
The Sierra Leone Panel of Experts	S/2000/1195 (20 December 2000), enclosure: <i>Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000), paragraph 19, in relation to Sierra Leone.</i>
The Taliban & Al Qaida Committee of Experts	S/2001/511 (22 May 2001), enclosure: <i>Report of the Committee of Experts appointed pursuant to Security Council resolution 1333 (2000), paragraph 15 (a), regarding monitoring of the arms embargo against the Taliban and the closure of terrorist training camps in the Taliban-held areas of Afghanistan.</i>
The Liberia II Panel(s) of Experts	S/2001/1015 (26 October 2001), enclosure: <i>Report of the Panel of Experts pursuant to Security Council resolution 1343 (2001), paragraph 19, concerning Liberia.</i> S/2002/470 (19 April 2002), annex: <i>Report of the Panel of Experts appointed pursuant to Security Council resolution 1395 (2002), paragraph 4, in relation to Liberia.</i> S/2002/1115 (25 October 2002), annex: <i>Report of the Panel of Experts appointed pursuant to Security Council resolution 1408 (2002), paragraph 16, concerning Liberia.</i> S/2003/498 (24 April 2003), annex: <i>Report of the Panel of Experts appointed pursuant to paragraph 4 of Security Council resolution 1458 (2003), concerning Liberia.</i> S/2003/779 (7 August 2003), annex: <i>Report of the Panel of Experts established pursuant to paragraph 25 of resolution 1478 (2003) concerning Liberia.</i> S/2003/937 (28 October 2003), annex: <i>Report of the Panel of Experts established pursuant to paragraph 25 of resolution 1478 (2003) concerning Liberia.</i>
The Somalia Team of Experts	S/2002/722 (3 July 2002), annex: <i>Report of the team of experts appointed pursuant to Security Council resolution 1407 (2002), paragraph 1, concerning Somalia.</i>
The Somalia Panel of Experts	S/2003/223 (25 March 2003), enclosure: <i>Report of the Panel of Experts on Somalia pursuant to Security Council resolution 1425 (2002).</i> S/2003/1035 (4 November 2003), enclosure: <i>Report of the Panel of Experts on</i>

	<i>Somalia pursuant to Security Council resolution 1474 (2003).</i>
<i>Liberia III Panel of Experts</i>	<i>S/2004/396 (1 June 2004), annex: Report of the Panel of Experts pursuant to paragraph 22 of Security Council resolution 1521 (2003) concerning Liberia.</i>

H. Provisions outlining monitoring body mandates

<i>Monitoring Body</i>	<i>Provisions establishing, modifying or re-establishing the Body's mandate</i>
<i>Iraq export/import monitoring mechanism</i>	Established: S/RES/715 (11 October 1995), operative paragraph 7.
<i>UNITA monitoring mechanism</i>	Established: S/RES/1295 (18 April 2000), operative paragraph 3. Extended: S/RES/1336 (23 January 2001), operative paragraph 3. S/RES/1348 (19 April 2001), operative paragraph 3. S/RES/1374 (19 October 2001), operative paragraph 3. S/RES/1404 (18 April 2002), operative paragraph 3. S/RES/1439 (18 October 2002), operative paragraph 2.
<i>The Taliban and Al Qaida Monitoring Group</i>	Established: S/RES/1363 (30 July 2001), operative paragraph 3. Extended: S/RES/1390 (16 January 2002), operative paragraphs 9, 10. S/RES/1455 (17 January 2003), operative paragraphs 8, 12, 13.
<i>The Somalia Monitoring Group</i>	Established: S/RES/1519 (16 December 2003), operative paragraph 2.
<i>The Taliban/Al Qaida Monitoring Team</i>	Established: S/RES/1526 (30 January 2004), operative paragraph 6.

I. Reports by monitoring bodies

Monitoring Body	Reports
UNITA monitoring mechanism	<p>S/2000/1225 (21 December 2000), enclosure: <i>Final Report of the Monitoring Mechanism on Angola Sanctions.</i></p> <p>S/2001/363 (18 April 2001), enclosure: <i>Addendum to the final report of the Monitoring Mechanism on Sanctions against UNITA.</i></p> <p>S/2001/966 (12 October 2001), enclosure: <i>Supplementary report of the Monitoring Mechanism on Sanctions against UNITA.</i></p> <p>S/2002/486 (26 April 2002), annex: <i>Additional report of the Monitoring Mechanism on Sanctions against UNITA.</i></p> <p>S/2002/1119 (16 October 2002), annex: <i>Additional report of the Monitoring Mechanism on Sanctions against UNITA.</i></p> <p>S/2002/1339 (10 December 2002), annex: <i>Final report of the Monitoring Mechanism on Sanctions against UNITA.</i></p>
The Taliban/Al Qaida Monitoring Group	<p>S/2002/65 (15 January 2002), annex: <i>First Report of the Monitoring Group on Afghanistan Established Pursuant to Security Council Resolution 1363 (2001).</i></p> <p>S/2002/541 (15 May 2002), enclosure: <i>Report of the Monitoring Group pursuant to Resolution 1390 (2002).</i></p> <p>S/2002/1050 (17 December 2002), enclosure: <i>Second report of the Monitoring Group Pursuant to Resolution 1390 (2002).</i></p> <p>S/2002/1338 (17 December 2002), enclosure: <i>Third report of the Monitoring Group Pursuant to Resolution 1390 (2002).</i></p> <p>S/2003/669 (8 July 2003), enclosure: <i>Report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) and extended by resolutions 1390 (2002) and 1455 (2003).</i></p> <p>S/2003/1070 (2 December 2003), enclosure: <i>Second Report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) and extended by resolutions 1390 (2002) and 1455 (2003).</i></p>

Appendices

The following appendices contain narrative summaries of the Security Council's decisions outlining the contours of each of its sanctions régimes. The summaries were written in order to compile the overview of the U.N. sanctions system contained in Part III, above. It was decided to include these summaries as appendices rather than incorporating them in the body of the thesis, so that the thesis is not too lengthy and so that there is not an imbalance between the sections devoted to theoretical and practical analysis.

1. The Southern Rhodesia sanctions régime¹

The Security Council established its first mandatory non-military sanctions régime in December 1966, imposing a range of measures against the white minority régime that had taken control of Southern Rhodesia in November 1965.² The major objectives of the sanctions régime were to end the reign of the minority régime and to enable the self-determination and independence of the Southern Rhodesian people. The sanctions régime initially consisted of a range of targeted trade sanctions, but it was subsequently expanded to incorporate a blend of comprehensive trade sanctions, as well as financial, diplomatic, and aviation sanctions. In December 1979, shortly after the minority régime relinquished control of Southern Rhodesia, the Security Council terminated the sanctions régime.³ It had been applied for a total of thirteen years.

1.1 The constitutional basis for imposing sanctions against Southern Rhodesia

The Security Council first characterised the situation in Southern Rhodesia as a potential threat to international peace and security in November 1965, shortly after the white

¹ For detailed analyses of Southern Rhodesian sanctions, see: Kuyper, Pieter Jan, *The Implementation of International Sanctions; the Netherlands and Rhodesia* (1978) Sijthoff & Noordhoff, Alphen aan den Rijn; Gowlland-Debbas, Vera, *Collective responses to illegal acts in international law : United Nations action in the question of Southern Rhodesia* (1990) Martinus Nijhoff, Boston, MA; Galtung, Johan, 'On the Effects of Economic Sanctions: With Examples from the Case of Rhodesia' in Nincic, Miroslav & Wallensteen, Peter, *Dilemmas of Economic Coercion* (1983) Praeger, New York, 17-60.

² S/RES/232 (16 December 1966). A year earlier the Council had imposed voluntary sanctions upon Southern Rhodesia, calling upon all States to impose diplomatic, arms and oil sanctions against the illegal régime. See: S/RES/217 (20 November 1965), operative paragraphs 6 (calling upon all States not to recognize the illegal régime nor entertain diplomatic relation with it), 8 (calling upon all States to desist from providing the illegal régime with arms, equipment and military material, and to break off economic relations, including by imposing an embargo on oil and petroleum products).

³ The sanctions régime against Southern Rhodesia was terminated by S/RES/460 (21 December 1979).

minority régime of Ian Smith declared “independence”. On 12 November 1965 the Council condemned that unilateral declaration, calling upon all States not to recognize the régime, which it described as “illegal” and “racist”.⁴ Eight days later the Council determined that the situation resulting from the proclamation of independence by the illegal authorities was extremely grave and that its continuance in time constituted a threat to international peace and security.⁵

In April 1966, the Council expressed grave concern at reports that oil may reach Southern Rhodesia,⁶ considered that such supplies would enable the illegal régime to remain in power longer,⁷ and determined that the resulting situation constituted a threat to the

⁴ S/RES/216 (12 November 1965), operative paragraphs 1, 2.

⁵ S/RES/217 (20 November 1965), operative paragraph 1. In resolution 217 (1965) the Council also called upon States to undertake a range of measures against the minority régime, including: not recognizing the illegal régime’s claim to power nor entertaining diplomatic relations with it; refraining from providing arms to the illegal régime; and breaking all economic relations with the illegal régime, including through placing an embargo on the provision of oil and petroleum products to that régime: see operative paragraphs 6, 8. The Council also called upon the Government of the United Kingdom to take certain steps to secure the demise of the illegal minority régime: see operative paragraphs 4, 5, 7, 9. Although a literal reading of the text of the resolution might suggest that the Council was applying sanctions under Article 41 as, in accordance with the text of Article 41 of the United Nations Charter, the Council had determined the existence of a threat to international peace and security and it was calling upon States to take certain measures to address that threat to international peace and security, the prevailing view in the Council was that the measures adopted did not possess the necessary character to constitute Article 41 sanctions. Rather, the sanctions were “voluntary” in nature, due to the fact that the Council had identified a situation the continuance of which would constitute a threat, rather than identifying a threat already in existence, as well as to the fact that the Council invoked neither Chapter VII of the Charter nor Article 41 whilst articulating the measures it was calling upon States to implement. See, e.g., S/PV.1265: paragraphs 18-38 [the representative of the Ivory Coast, arguing that the situation had warranted action under Chapter VII and Article 41 and regretting that it had been necessary to put a compromise draft resolution to the vote instead of the draft resolution originally proposed by his delegation]; paragraphs 61-69, paragraph 64 [the representative of the United Kingdom, stating that his delegation did not regard the resolution just adopted as falling under Chapter VII of the Charter]. More than a year later, however, the Council did apply mandatory measures against Southern Rhodesia, adopting resolution 232 (1966), in which it explicitly invoked Articles 39 and 41 before imposing sanctions.

⁶ S/RES/221 (9 April 1966), preambular paragraph 2.

⁷ S/RES/221 (9 April 1966), preambular paragraph 3.

peace.⁸ In December 1966, before outlining the mandatory sanctions to be applied against the illegal minority régime in Southern Rhodesia, the Security Council noted that it was acting in accordance with Articles 39 and 41 of the United Nations Charter and determined that the situation in Southern Rhodesia constituted a threat to international peace and security.⁹ In all of its subsequent resolutions modifying the scope of the sanctions régime, the Council both reaffirmed the ongoing nature of the threat posed to international peace and security by the illegal minority régime in Southern Rhodesia¹⁰ and invoked Chapter VII of the United Nations Charter.¹¹ In one of those resolutions, the Council also stated explicitly that it was acting in accordance with Article 41 of the Charter.¹²

1.2 The objective of the Southern Rhodesia sanctions régime

The objectives of the sanctions régime against Southern Rhodesia were to bring the rebellion in Southern Rhodesia to an end¹³ and to enable the self-determination and independence of the Southern Rhodesian people.¹⁴

⁸ S/RES/221 (9 April 1966), operative paragraph 1.

⁹ S/RES/232 (16 December 1966), preambular paragraph 4, operative paragraph 1.

¹⁰ See, e.g., S/RES/253 (29 May 1968), preambular paragraph 9; S/RES/277 (18 March 1970), preambular paragraph 6; S/RES/388 (6 April 1976), preambular paragraph 4; S/RES/409 (27 May 1977), preambular paragraph 4; S/RES/445 (8 March 1979), preambular paragraph 7; and S/RES/455 (23 November 1979), preambular paragraph 8.

¹¹ See, e.g., S/RES/253 (29 May 1968), preambular paragraph 10; S/RES/277 (18 March 1970), preambular paragraph 7; S/RES/388 (6 April 1976), preambular paragraph 5; S/RES/409 (27 May 1977), preambular paragraph 5.

¹² See S/RES/277 (18 March 1970), operative paragraph 9.

¹³ See, e.g., S/RES/232 (16 December 1966), preambular paragraph 2; S/RES/253 (29 May 1968), preambular paragraph 3 and operative paragraph 3; S/RES/277 (18 March 1970), operative paragraph 9; S/RES/288 (17 November 1970), operative paragraph 2; S/RES/326 (2 February), operative paragraph 4; S/RES/423 (14 March 1978), in general.

¹⁴ See, e.g., S/RES/232 (16 December 1966), operative paragraph 4; S/RES/253 (29 May 1968), preambular paragraphs 7, 8, operative paragraph 2; S/RES/277 (18 March 1970), preambular paragraph 5, operative paragraph 4; S/RES/288 (17 November 1970), preambular paragraph 4, operative paragraph 2; S/RES/318 (28 July 1972), operative paragraphs 1, 2; S/RES/326 (2 February), preambular paragraph 3; S/RES/328 (10 March 1973), preambular paragraph 7, operative paragraph 3; S/RES/386 (17 March 1976), preambular paragraph 4; S/RES/403 (14

1.3 The scope of the Southern Rhodesia sanctions régime

The Southern Rhodesian sanctions régime initially consisted of a mixture of targeted economic sanctions, but it was subsequently expanded to include a comprehensive blend of economic, financial, travel, aviation and diplomatic sanctions. When it initiated the sanctions régime, the Security Council required all Member States of the United Nations to prevent the import of a number of Southern Rhodesia's major export products,¹⁵ and the export to Southern Rhodesia of: arms and arms-related material;¹⁶ aircraft and motor vehicles and associated parts;¹⁷ and oil and oil products.¹⁸ The Council also called upon all States to refrain from providing financial or economic aid to the illegal régime in Southern Rhodesia.¹⁹

In May 1968, eighteen months after the sanctions were first imposed against Southern Rhodesia, the Security Council expanded the sanctions régime by requiring Member States to prevent: (a) The ingress to and egress from Southern Rhodesia of all commodities and products;²⁰ (b) The transfer of economic or financial resources to Southern

January 1977), preambular paragraph 3; S/RES/424 (17 March 1978), preambular paragraph 4; S/RES/445 (8 March 1979), preambular paragraph 8; S/RES/448 (30 April 1979), preambular paragraph 7; S/RES/460 (21 December 1979), operative paragraph 1; S/RES/463 (2 February 1980), operative paragraph 1.

¹⁵ S/RES/232 (16 December 1966), operative paragraph 2 (a-c). These targeted exports included asbestos, iron-ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products and hides, skins and leather.

¹⁶ S/RES/232 (16 December 1966), operative paragraph 2 (d) (using the phrase: "Decides that all States Members of the United Nations shall prevent: ... the sale or shipment to Southern Rhodesia of arms, ammunition of all types, military aircraft, military vehicles, and equipment and of arms and ammunition").

¹⁷ S/RES/232 (16 December 1966), operative paragraph 2 (e).

¹⁸ S/RES/232 (16 December 1966), operative paragraph 2 (f).

¹⁹ S/RES/232 (16 December 1966), operative paragraph 5.

²⁰ S/RES/253 (29 May 1968), operative paragraph 3. The Council did make provision, however, for exemptions to be granted from the sanctions against the supply to Southern Rhodesia of commodities or products régime for medical supplies, educational equipment, news materials, and foodstuffs - in special humanitarian circumstances: see operative paragraph 3(d).

Rhodesia;²¹ (c) Southern Rhodesian citizens and residents from entering their territories;²² and (d) Airline companies linked to their territories or nationals from flying to or from Southern Rhodesia and from linking up with Southern Rhodesian airlines.²³ At the same time, the Council also emphasized the need for the withdrawal of all consular and trade representation in Southern Rhodesia.²⁴

In March 1970 the Council further tightened the sanctions by requiring Member States: (a) To refrain from recognizing the illegal régime or rendering any assistance to it;²⁵ (b) To sever diplomatic and other relations with the illegal régime;²⁶ and (c) To interrupt all transportation to and from Southern Rhodesia.²⁷ In April 1976 the Council again strengthened the sanctions régime, requiring Member States: (a) To prevent their nationals and people in their territories from insuring commodities and products exported from or imported to Southern Rhodesia;²⁸ and (b) To prevent their nationals and people in their territories from granting any commercial, industrial or public entity in Southern Rhodesia the right to use trade names.²⁹ In May 1977 the Council further required Member States to

²¹ S/RES/253 (29 May 1968), operative paragraph 4. The Council did make provision for exemptions for payments exclusively for pensions or for medical, humanitarian, or educational purposes and for foodstuffs - in special humanitarian circumstances.

²² S/RES/253 (29 May 1968), operative paragraph 5. The Council provided, however, that exemptions might be provided from the travel sanctions "on exceptional humanitarian grounds".

²³ S/RES/253 (29 May 1968), operative paragraph 6.

²⁴ S/RES/253 (29 May 1968), operative paragraph 10.

²⁵ S/RES/277 (18 March 1970), operative paragraph 2.

²⁶ S/RES/277 (18 March 1970), operative paragraph 9(a).

²⁷ S/RES/277 (18 March 1970), operative paragraph 9(b).

²⁸ S/RES/388 (6 April 1976), operative paragraph 1.

²⁹ S/RES/388 (6 April 1976), operative paragraph 2.

prohibit the use or transfer of funds in their territories by the illegal South Rhodesian régime.³⁰

1.4 The administration, monitoring and enforcement of the Southern Rhodesia sanctions régime

The Security Council bestowed responsibilities relating to the administration, implementation and enforcement of the Southern Rhodesia sanctions régime upon the Secretary-General and the Sanctions Committee it established in resolution 253 (1968).

1.4.1 The role of the Secretary-General

When the Council first applied the sanctions against Southern Rhodesia, it requested States Members of the United Nations to report to the Secretary-General any measures taken to implement the sanctions.³¹ At the same time, the Council also requested the Secretary-General, in turn, to report to it within ten weeks on progress made in implementing the sanctions.³² When the Council subsequently modified the scope of the sanctions, it again requested States Members of the United Nations to report to the Secretary-General on measures taken to implement the sanctions and requested the Secretary-General, in turn, to report to it on the progress of the implementation of the sanctions.³³ The other explicit request made of the Secretary-General by the Council was to provide all appropriate assistance to the 253 Committee in the discharge of its tasks.³⁴

³⁰ S/RES/409 (27 May 1977), operative paragraph 1.

³¹ S/RES/232 (16 December 1966), operative paragraph 8.

³² S/RES/232 (16 December 1966), operative paragraph 9.

³³ See, e.g., S/RES/253 (29 May 1968), operative paragraphs 18, 19 [requesting the Secretary-General to report to it within three months]; S/RES/277 (18 March 1970), operative paragraphs 19, 20 [requesting the Secretary-General to report to it in three months].

³⁴ S/RES/314 (28 February 1972), operative paragraph 7; S/RES/318 (28 July 1972), operative paragraph 10.

Also in connection with the Southern Rhodesia sanctions régime, the Council requested the Secretary-General to organize the provision of financial, technical and material assistance to Mozambique in order to help it to overcome the difficulties it was experiencing as a result of implementing the sanctions against Southern Rhodesia.³⁵

1.4.2 The Southern Rhodesia Sanctions Committee

In May 1968, eighteen months after the Southern Rhodesian sanctions régime was established, the Security Council decided to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee to oversee the implementation of the sanctions (the “Southern Rhodesia Committee” or the “253 Committee”).³⁶ The Committee’s initial mandate was to examine the reports of the Secretary-General on the implementation of comprehensive sanctions³⁷ and to seek information from U.N. Member States regarding activity that might constitute a breach of the sanctions.³⁸ In subsequent resolutions, the Council reaffirmed those tasks of the Committee,³⁹ and it also decided that the Committee would undertake the following additional tasks: (a) To make recommendations to the Council on how Member States could carry out more effectively Council decisions regarding the sanctions and to;⁴⁰ (b) To consider how the implementation of sanctions might be ensured and to report to the Council with recommendations concerning its terms of

³⁵ S/RES/386 (17 March 1976), operative paragraph 6 (requesting “the Secretary-General, in collaboration with the appropriate organizations of the United Nations system, to organize, with immediate effect, all forms of financial, technical and material assistance to Mozambique to enable it to overcome the economic difficulties arising from its application of economic sanctions against the racist régime in Southern Rhodesia”). In the same resolution the Council also requested States and the United Nations in general to provide assistance to Mozambique. See: *ibid*, operative paragraphs 4, 5.

³⁶ S/RES/253 (29 May 1968), operative paragraph 20.

³⁷ S/RES/253 (29 May 1968), operative paragraph 20(a).

³⁸ S/RES/253 (29 May 1968), operative paragraph 20(b).

³⁹ See, e.g., S/RES/277 (18 March 1970), operative paragraphs 21(a) and (b); .

reference and other measures designed to ensure the effectiveness of its work;⁴¹ (c) To report to the Council on the type of action which could be taken to address the refusal of South Africa and Portugal to implement the sanctions, as well as on proposals made at the 1663rd to 1666th meetings of the Council for extending the scope and effectiveness of the sanctions;⁴² (d) To report to the Council on the possible application of further measures under Article 41;⁴³ and (e) To submit proposals regarding measures for strengthening and widening the sanctions.⁴⁴

During its twelve-year existence the 253 Committee was very active, holding a total of 352 formal meetings,⁴⁵ and submitting to the Security Council twelve general reports on its activities,⁴⁶ five interim reports on its activities,⁴⁷ and eleven special reports on matters not

⁴⁰ S/RES/277 (18 March 1970), operative paragraph 21(c).

⁴¹ S/RES/314 (28 February 1972), operative paragraph 6.

⁴² S/RES/320 (29 September 1972), operative paragraphs 4 and 5. The Council requested that the Committee submit this report no later than 31 January 1973. The Committee was late in submitting the report, however, as the Council's subsequent requests to it to expedite its preparation of that report attest: see, e.g., S/RES/326 (2 February 1973), operative paragraph 8; S/RES/328 (10 March 1973), operative paragraph 6.

⁴³ S/RES/409 (27 May 1977), operative paragraph 3.

⁴⁴ S/RES/445 (8 March 1979), operative paragraph 8.

⁴⁵ *Index to Proceedings of the Security Council for 1979* (1980) United Nations, New York, p. 2 [listing the meetings held by the Committee during the period leading up to its dissolution].

⁴⁶ S/8954 (30 December 1968): *Report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 23rd year, Supplement for October, November and December 1968*, pp. 181-295; S/9252 (12 and 13 June 1969): *Second report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 24th year, Supplement for April, May and June 1969*, pp. 195-329; S/9844 and Corr.1-2 (15 June 1970): *Third report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 25th year, Special Supplement No. 3*; S/10229 & Add.1 (16 June & 13 July 1971): *Fourth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 26th year, Special Supplements 2 & 2A*; S/10852 & Add.1-2 (22 and 31 December 1972 & 2 February 1973): *Fifth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 27th year, Special Supplement No. 2*; S/11178 and Rev. 1 (3 January 1974): *Sixth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia, SCOR, 29th year, Special Supplement Nos 2, 2A*; S/11594 and Rev. 1 (9 and 10 January 1975): *Seventh report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of*

related to its regular activities.⁴⁸ The Committee's reports were often extensive, containing detailed analysis of exports from and imports to Southern Rhodesia during the reporting

Southern Rhodesia: SCOR, 30th year, Special Supplement No. 2, Vols I-II; S/11927 & Add.1 (8 January and 6 February 1976): Eighth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia: SCOR, 31st year, Special Supplement No. 2, Vols I-II; S/12265 (21 December 1976): Ninth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia: SCOR, 32nd year, Special Supplement, No. 2, Vols. I-III; S/12529 & Add.1 (1 March 1978): Tenth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia: SCOR, 33rd year, Special Supplement No. 2, Vols. I, II; S/13000 (11 January 1979): Eleventh report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia: SCOR, 34th year, Special Supplement No. 2, Vols. III; S/13750 (15 January 1980): Twelfth report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia: SCOR, 35th year, Special Supplement No. 2, Vols. I-III.

⁴⁷ S/10408 (3 December 1971): *Interim report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia*; S/10580 (29 March 1972): *Second interim report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia*; S/10593 (10 April 1972): *Third interim report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia*; S/12450 (18 November 1977): *Interim report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia on the implementation of Security Council resolutions 409 (1977) and 411 (1977)*; S/13191 (23 March 1979): *Interim report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia*.

⁴⁸ S/10632 (9 May 1972): *Special report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia*; S/10920 and Corr. 1 (15 April 1973): *Second special report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia*; S/11597 (15 January 1975): *Special report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia on external participation in the expansion of the Rhodesian Iron and Steel Company, Limited: SCOR, 30th year, Special Supplement No. 3; S/11913 (15 December 1975): Special report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia on the expansion of sanctions against Southern Rhodesia*; S/12296 (31 December 1976): *Second special report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia on the expansion of sanctions against Southern Rhodesia*; S/13296 (4 May 1979): *Report of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia on the implementation of resolutions 409 (1977), 411 (1977) and 445 (1979)*.

period, as well as transcripts of some of the Committee's meetings.⁴⁹ The Committee also made recommendations and suggestions to the Council, some of which were acted upon.⁵⁰

1.4.3 States

States were called upon to undertake a number of additional actions to strengthen the implementation, enforcement and monitoring of the sanctions against Southern Rhodesia. Interestingly, the first requests to States to take action in relation to Southern Rhodesia occurred prior to the actual application of mandatory sanctions. In November 1965, the Council had called upon States to impose voluntary diplomatic, arms and oil sanctions. In April 1966, the Council recalled the resolution calling for the application of voluntary sanctions,⁵¹ expressed grave concern at reports that oil was soon to reach the illegal régime,⁵² considered that such supplies would enable the illegal régime to remain in power longer,⁵³ and determined that the resulting situation constituted a threat to the peace.⁵⁴ The Council then called upon Portugal not to permit oil to be pumped to Southern Rhodesia via a pipeline in Mozambique, over which Portugal retained administering powers,⁵⁵ and not to receive oil destined for Southern Rhodesia at the port of Beira, in Mozambique.⁵⁶ At the same time, the Council also called upon all States to ensure that none of their vessels carried

⁴⁹ For detailed analysis of the Committee's reports, see: Gowlland-Debbas, *Collective responses*, above note 1.

⁵⁰ Examples of this include the Security Council's approval of recommendations and suggestions in section III of the Committee's special report [S/RES/318 (28 July 1972), operative paragraph 4], as well as of the recommendations and suggestions in paragraphs 10 to 22 of the second special report of the 253 Committee [S/RES/333 (22 May 1973), operative paragraph 1].

⁵¹ S/RES/221 (9 April 1966), preambular paragraph 1.

⁵² S/RES/221 (9 April 1966), preambular paragraph 2.

⁵³ S/RES/221 (9 April 1966), preambular paragraph 3.

⁵⁴ S/RES/221 (9 April 1966), operative paragraph 1.

⁵⁵ S/RES/221 (9 April 1966), operative paragraph 2.

⁵⁶ S/RES/221 (9 April 1966), operative paragraph 3.

oil to Beira,⁵⁷ called upon the United Kingdom to prevent, by the use of force if necessary, the arrival at Beira of vessels believed to be carrying oil destined for Southern Rhodesia,⁵⁸ and empowered the United Kingdom to detain the tanker known as Joanna V upon its departure from Beira, in the event that it had discharged oil.⁵⁹

When the Council first imposed the mandatory sanctions against Southern Rhodesia, it called upon all States Members of the United Nations to implement the sanctions in accordance with Article 25 of the United Nations Charter,⁶⁰ urged States not Members of the United Nations to act in accordance with the sanctions,⁶¹ and called upon States Members of the United Nations and members of the specialized agencies to report to the Secretary-General the measures they had taken to implement the sanctions.⁶²

In May 1968, the Council required all States Members of the United Nations to give effect to the sanctions, notwithstanding any contract entered into or licence granted,⁶³ called upon all States Members of the United Nations or of the specialized agencies to take all possible measures to prevent activities by their nationals and persons in their territories promoting, assisting or encouraging emigration to Southern Rhodesia, with a view to stopping such emigration,⁶⁴ and requested all States Members of the United Nations or of the specialized agencies to take all possible further action under Article 41 of the Charter to

⁵⁷ S/RES/221 (9 April 1966), operative paragraph 4.

⁵⁸ S/RES/221 (9 April 1966), operative paragraph 5.

⁵⁹ S/RES/221 (9 April 1966), operative paragraph 5.

⁶⁰ S/RES/232 (16 December 1966), operative paragraph 6.

⁶¹ S/RES/232 (16 December 1966), operative paragraph 7.

⁶² S/RES/232 (16 December 1966), operative paragraph 8. The Council reaffirmed that call in subsequent resolution connected with the sanctions régime. See: S/RES/253 (29 May 1968), operative paragraph 18; S/RES/277 (18 March 1970), operative paragraph 19.

⁶³ S/RES/253 (29 May 1968), operative paragraph 7.

⁶⁴ S/RES/253 (29 May 1968), operative paragraph 8.

deal with the situation in Southern Rhodesia.⁶⁵ The Council also called upon all States Members of the United Nations to carry out its decisions in accordance with Article 25 of the Charter,⁶⁶ referred to Article 2(6) of the Charter in urging all States not Members of the United Nations to act in accordance with the sanctions,⁶⁷ and requested States Members of the United Nations, the United Nations Organization, the specialized agencies and other international organizations in the United Nations system to extend assistance to Zambia as a matter of priority with a view to helping it solve such special economic problems as it might be confronted with from carrying out the sanctions.⁶⁸ The Council also called upon States Members of the United Nations, and particularly those with primary responsibility under the Charter for the maintenance of international peace and security, to assist effectively in the implementation of the sanctions,⁶⁹ and called upon States Members of the United Nations and members of the specialized agencies, as well as the agencies themselves, to supply to the 253 Committee such information as it may seek.⁷⁰ The Council also requested the United Kingdom, as the administering Power over Southern Rhodesia, to give maximum

⁶⁵ S/RES/253 (29 May 1968), operative paragraph 9.

⁶⁶ S/RES/253 (29 May 1968), operative paragraph 11.

⁶⁷ S/RES/253 (29 May 1968), operative paragraph 14; S/RES/277 (18 March 1970), operative paragraph 18; S/RES/388 (6 April 1976), operative paragraph 3; S/RES/409 (27 May 1977), operative paragraph 2.

⁶⁸ S/RES/253 (29 May 1968), operative paragraph 15. The Council requested the same actors to increase such assistance in S/RES/277 (18 March 1970), operative paragraph 16.

⁶⁹ S/RES/253 (29 May 1968), operative paragraph 16. The Council reaffirmed that call in subsequent resolutions connected with the sanctions régime. See: S/RES/277 (18 March 1970), operative paragraph 17.

⁷⁰ S/RES/253 (29 May 1968), operative paragraph 22. The Council reaffirmed that call in subsequent resolutions connected with the sanctions régime. See: S/RES/277 (18 March 1970), operative paragraph 23.

assistance to the 253 Committee, providing it with any information received in order to make the sanctions fully effective.⁷¹

In March 1970, when the Council applied diplomatic sanctions against the illegal régime in Southern Rhodesia, it called upon States to take a range of additional action. It thus called upon Member States: to take measures at the national level to ensure that any act performed by officials and institutions of the illegal régime in Southern Rhodesia were not accorded any recognition by the competent organs of their State;⁷² to take more stringent measures to prevent circumvention of the sanctions by their nationals, organizations, companies and other institutions;⁷³ and to take appropriate action to suspend any membership or associate membership that the illegal régime had in the specialized agencies of the United Nations.⁷⁴ The Council further urged Member States of any international or regional organizations to suspend the membership of the illegal régime from their respective organizations and to refuse any applications by that régime for membership.⁷⁵ Finally, the Council requested the Government of the United Kingdom, as the administering power, to take rescind or withdraw any existing agreements on the basis of which foreign consular, trade and other representation might be maintained in or with Southern Rhodesia.⁷⁶

In February 1972, the Council urged all States to implement fully the sanctions, in accordance with their obligations under Article 25 and Article 2(6) the Charter,⁷⁷ and called

⁷¹ S/RES/253 (29 May 1968), operative paragraph 21. The Council reaffirmed that call in subsequent resolutions connected with the sanctions régime. See: S/RES/277 (18 March 1970), operative paragraph 22.

⁷² S/RES/277 (18 March 1970), operative paragraph 3.

⁷³ S/RES/277 (18 March 1970), operative paragraph 8.

⁷⁴ S/RES/277 (18 March 1970), operative paragraph 12.

⁷⁵ S/RES/277 (18 March 1970), operative paragraph 13.

⁷⁶ S/RES/277 (18 March 1970), operative paragraph 10.

⁷⁷ S/RES/314 (28 February 1972), operative paragraph 2.

upon all States to take more effective measures to ensure full implementation of the sanctions.⁷⁸ In July 1972, the Council urged all States to review the adequacy of legislation and practices followed so far in relation to matters relating to the sanctions and to take more effective measures to ensure their full implementation.⁷⁹ In September 1972, the Council called upon all States to implement fully the sanctions, in accordance with Article 25 and Article 2(6) of the Charter,⁸⁰ and it urged the United States to cooperate fully in the effective implementation of the sanctions.⁸¹ In March 1973, the Council requested all Governments to take stringent measures to enforce and ensure full compliance by all individuals and organizations under their jurisdiction with the sanctions.⁸²

In May 1973, the Council requested that States take a range of additional actions aimed at strengthening the implementation of the sanctions against Southern Rhodesia. The Council thus requested States to repeal immediately any legislation permitting importation of minerals and other products from Southern Rhodesia.⁸³ It also called upon States to enact and enforce legislation providing for the imposition of severe penalties on persons natural or juridical that evaded or breached sanctions.⁸⁴ Seeking to address the actions of South Africa and Portugal, which had continued to trade with Southern Rhodesia in violation of the sanctions, the Council requested States which engaged in trade relations with those two countries to ensure that purchase contracts with those countries stipulated the prohibition of dealing in goods of Southern Rhodesian origin and that sales contracts with those countries

⁷⁸ S/RES/314 (28 February 1972), operative paragraph 5.

⁷⁹ S/RES/318 (28 July 1972), operative paragraph 9.

⁸⁰ S/RES/320 (29 September 1972), operative paragraph 2.

⁸¹ S/RES/320 (29 September 1972), operative paragraph 3.

⁸² S/RES/328 (10 March 1973), operative paragraph 7.

⁸³ S/RES/333 (22 May 1973), operative paragraph 3.

included a prohibition of resale or re-export of goods to Southern Rhodesia.⁸⁵ Finally, the Council called upon all States to inform the 253 Committee of their present sources of supply and quantities of chrome, asbestos, nickel, pig iron, tobacco, meat and sugar, together with the quantities of those goods they had originally obtained from Southern Rhodesia prior to the application of sanctions.⁸⁶

In October 1978, the Council noted with regret and concern the decision of the United States to allow entry into its territories of Ian Smith and other members of the illegal régime in Southern Rhodesia.⁸⁷ The Council considered that that decision was in contravention of the sanctions and thus of obligations under Article 25 of the Charter,⁸⁸ and it called upon the United States to observe scrupulously the sanctions.⁸⁹

1.5 Termination of the Southern Rhodesia sanctions régime

The sanctions against Southern Rhodesia were ultimately terminated in December 1979, once it had become apparent that there would be a transition from minority to democratic rule. Upon the signing of an agreement on the Constitution for a free and independent Zimbabwe providing for genuine majority rule, the Council adopted resolution 448 (1979), terminating the sanctions régime and dissolving the 253 Sanctions Committee.⁹⁰ Commentators differ as to the extent to which the sanctions contributed to the demise of the minority régime. During the thirteen-year period in which sanctions were applied, a number

⁸⁴ S/RES/333 (22 May 1973), operative paragraph 4.

⁸⁵ S/RES/333 (22 May 1973), operative paragraph 5.

⁸⁶ S/RES/333 (22 May 1973), operative paragraph 8.

⁸⁷ S/RES/437 (10 October 1978), operative paragraph 1.

⁸⁸ S/RES/437 (10 October 1978), operative paragraph 2.

⁸⁹ S/RES/437 (10 October 1978), operative paragraph 3.

⁹⁰ S/RES/460 (21 December 1979), operative paragraphs 2 and 3.

of States continued to engage in relations with the minority régime in contravention of sanctions.⁹¹ Furthermore, the régime itself maintained an aggressive foreign policy which included engaging in military activities against Zambia,⁹² Botswana,⁹³ Angola⁹⁴ and Mozambique.⁹⁵

1.6 Notable aspects of the Southern Rhodesia sanctions régime

As the Southern Rhodesia sanctions régime was the first to be established by the Security Council, almost everything about it was “notable”. With the benefit of hindsight, however, it is possible to identify particular characteristics of the régime that distinguish it from later régimes.

First, the Security Council made a number of explicit references to provisions of the United Nations Charter in its resolutions related to the Southern Rhodesia sanctions régime. The Council made such references both in order to identify the constitutional basis for the actions taken, as with references to Articles 39, 41, 49 and 50,⁹⁶ and so as to demonstrate the manner in which legal consequences flowed from its actions, as with its references to

⁹¹ Among the States identified as contravening the sanctions were Portugal and South Africa which continued to provide Southern Rhodesia with assistance [see S/RES/277 (18 March 1970), preambular paragraph 4(c)] and the U.S., which allowed Ian Smith and other members of the minority regime to enter the U.S. in contravention of resolution 253 (1968), operative paragraph 5 [see S/RES/437 (10 October 1978), operative paragraphs 1-4].

⁹² See, e.g.: S/RES/326 (2 February 1973); S/RES/327 (2 February 1973); S/RES/328 (10 March 1973); S/RES/424 (17 March 1978).

⁹³ See S/RES/403 (14 January 1977); S/RES/406 (25 May 1977).

⁹⁴ See S/RES/445 (8 March 1979).

⁹⁵ See S/RES/445 (8 March 1979).

⁹⁶ For reference to Articles 39 and 41 as the explicit constitutional basis for action, see: S/RES/232 (16 December 1966), preambular paragraph 4. For general references to Article 41 see: S/RES/253 (29 May 1968), operative paragraph 9; S/RES/277 (18 March 1970), operative paragraphs 9 and 11; S/RES/409 (27 May 1977), operative paragraph 3. For explicit reference to Articles 49 and 50 as the constitutional basis for action, see: S/RES/386 (17 March 1976), preambular paragraph 10.

Articles 2, 2(6) and 25.⁹⁷ In its resolutions relating to subsequent sanctions régimes, the Council has tended to be less explicit, using language which can be interpreted as implicit references to provisions of the Charter. In general, the Council will thus identify a threat to the peace without invoking Article 39 and note that it is acting under Chapter VII without invoking Article 41.

Second, the Council drew a distinction between the obligations of States Members of the United Nations and States non-members. When the Council defined and modified the scope of the sanctions régime, it required “all States Members of the United Nations” to impose the sanctions.⁹⁸ In many instances it also made explicit reference to the obligation of States Members of the United Nations to implement the sanctions in accordance with Article 25 of the Charter.⁹⁹ At the same time, however, the Council also reminded States

⁹⁷ For reference to Article 25 as the basis of the legal obligation upon Member States, see: S/RES/232 (16 December 1966), operative paragraphs 3, 6; S/RES/253 (29 May 1968), preambular paragraph 5, operative paragraphs 11, 12; S/RES/277 (18 March 1970), preambular paragraph 4(b); S/RES/288 (17 November 1970), preambular paragraph 3, operative paragraph 4; S/RES/314 (28 February 1972), preambular paragraph 3, operative paragraph 2; S/RES/318 (28 July 1972), preambular paragraph 5; S/RES/320 (29 September 1972), preambular paragraph 3, operative paragraph 2; S/RES/333 (22 May 1973), preambular paragraph 3; S/RES/437 (10 October 1978), operative paragraph 2; S/RES/460 (21 December 1979), operative paragraph 4. For reference to Article 2 in general in connection with an appeal to States not Members of the United Nations to act in accordance with the sanctions, see: S/RES/232 (16 December 1966), operative paragraph 7; S/RES/253 (29 May 1968), operative paragraph 14; S/RES/277 (18 March 1970), operative paragraph 18; S/RES/388 (6 April 1976), operative paragraph 3. For reference to Article 2(6) in the same connection, see: S/RES/314 (28 February 1972), operative paragraph 2; S/RES/320 (29 September 1972), operative paragraph 2; S/RES/409 (27 May 1977), operative paragraph 2.

⁹⁸ See, e.g., S/RES/232 (16 December 1966), operative paragraph 2; S/RES/253 (29 May 1968), operative paragraphs 3-6; S/RES/277 (18 March 1970), operative paragraphs 2, 9; S/RES/388 (6 April 1976), operative paragraphs 1, 2 [using the phrase “all Member States” rather than the longer “all States Members of the United Nations”]; S/RES/409 (27 May 1977), operative paragraph 1 [again using the phrase “all Member States”].

⁹⁹ See, e.g., S/RES/232 (16 December 1966), operative paragraphs 3, 6; S/RES/253 (29 May 1968), preambular paragraph 5, operative paragraphs 11, 12; S/RES/277 (18 March 1970), preambular paragraph 4(b); S/RES/288 (17 November 1970), preambular paragraph 3, operative paragraph 4; S/RES/314 (28 February 1972), preambular paragraph 3, operative paragraph 2; S/RES/318 (28 July 1972), preambular paragraph 5; S/RES/320 (29 September 1972), preambular paragraph 3, operative paragraph 2; S/RES/333 (22 May 1973), preambular paragraph 3; S/RES/437 (10 October 1978), operative paragraph 2; S/RES/460 (21 December 1979), operative paragraph 4.

non-members of the United Nations of the provisions of Article 2 of the Charter in general,¹⁰⁰ or of Article 2(6) in particular,¹⁰¹ thus alluding to a potential basis for legally obligating even those States that were not Members of the United Nations.

Third, by creating the 253 Committee the Council established its first Sanctions Committee. Perhaps because it was the very first Sanctions Committee, the 253 Committee was considerably more active than most of its fourteen younger cousins. The 253 Committee remains the Committee which held the most meetings, circulated the highest number of substantive reports,¹⁰² and made the most substantive recommendations to the Security Council regarding potential modifications to a sanctions régime.

Fourth, in some of its resolutions related to the Southern Rhodesian sanctions régime, the Council called upon States that were not implementing the sanctions to comply with their obligations to do so.¹⁰³ Finally, in its oversight of the Southern Rhodesian sanctions régime, the Security Council also invoked the provisions of Article 50 for the first time in

¹⁰⁰ See, e.g., S/RES/232 (16 December 1966), operative paragraph 7; S/RES/253 (29 May 1968), operative paragraph 14; S/RES/277 (18 March 1970), operative paragraph 18; S/RES/388 (6 April 1976), operative paragraph 3.

¹⁰¹ See, e.g., S/RES/314 (28 February 1972), operative paragraph 2; S/RES/320 (29 September 1972), operative paragraph 2; S/RES/409 (27 May 1977), operative paragraph 2.

¹⁰² Although the 661 Committee has submitted a greater number of reports to the Council, many of them were pro forma reports with little or no new substantive information. For discussion of such reports, see Appendix 3.

¹⁰³ See, e.g.: S/RES/277 (18 March 1970), operative paragraph 6 (condemning the policies of South Africa and Portugal, which were continuing to maintain political, economic, military and other relations with the illegal régime in Southern Rhodesia); S/RES/320 (29 September 1972), preambular paragraphs 5 (expressing deep concern at reports that the United States had authorized the import of chrome ore and other minerals from Southern Rhodesia), 6 (condemning the refusal of South Africa and Portugal to implement sanctions against Southern Rhodesia), operative paragraphs 3 (urging the United States to implement the sanctions), 4 (requesting the 253 Committee to consider what action could be taken in view of the open and persistent refusal by South Africa and Portugal to implement the sanctions); S/RES/333 (22 May 1973), preambular paragraphs 4 (condemning the persistent refusal by South Africa and Portugal to implement the sanctions); S/RES/437 (10 October 1978), operative paragraphs 1-3 (expressing concern at the decision of the United States to grant entry to its territories to Ian Smith and other members of the illegal régime, noting that that decision contravened the

relation to a sanctions régime,¹⁰⁴ recommending that States and international organizations and agencies provide special assistance to Zambia and Mozambique.¹⁰⁵

obligations of the United States under Article 25, and calling upon the United States to observe scrupulously the provisions of Security Council resolutions concerning sanctions).

¹⁰⁴ Article 50 provides: "If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems".

¹⁰⁵ The Council made such recommendations in relation to Zambia in: S/RES/327 (2 February 1973), preambular paragraph 5, operative paragraph 2; S/RES/329 (10 March 1973), operative paragraphs 2-6. It made recommendations relating to Mozambique, invoking both Articles 49 and 50, in: S/RES/386 (17 March 1976), preambular paragraph 10, operative paragraphs 3-6. The Council also made recommendations relating to the provision of special economic assistance to Botswana, although it is unclear whether that was aimed at alleviating the consequences of the sanctions régime or of the aggression perpetrated against that country by Southern Rhodesia: S/RES/403 (14 January 1977), operative paragraphs 5-8; S/RES/406 (25 May 1977), operative paragraphs 5-7.

2. *The South Africa sanctions régime*¹

The Security Council applied mandatory sanctions against South Africa in November 1977, with the aims of restricting the South African Government's potential to threaten international peace and security, eliminating the policy of *apartheid* and ensuring the enjoyment of equal rights by all South African citizens. The mandatory sanctions régime, which consisted of an arms embargo,² was eventually terminated in May 1994, after the inauguration of Nelson Mandela's Government.

2.1 The constitutional basis for imposing sanctions against South Africa

In late-1977, almost fourteen years after it had begun to experiment with a policy of a "voluntary" arms embargo against South Africa,³ the Security Council adopted two

¹ For detailed analyses of the sanctions against South Africa, see: Crawford, Neta C. & Klotz, Audie (eds), *How Sanctions Work; Lessons from South Africa* (1999) St. Martin's Press, NY; Hermele, Kenneth, & Odén, Bertil, *Sanctions Dilemmas: some implications of sanctions against South Africa* (1988) Scandinavian Institute of African Studies, Uppsala; Hoffman, John, 'Legitimate Intervention and Illegitimate States: sanctions against South Africa' in Forbes, Ian & Hoffman, John (eds), *Political Theory, International Relations, and the Ethics of Intervention* (1993) St. Martin's Press, New York, 157-66.

² In addition to the mandatory arms embargo, the Council also called upon States to impose a range of voluntary sanctions. For further details, see section 2.3, below.

³ In August 1963, the Council had characterised the South African Government's continuation of the policy of *apartheid* and its actions to increase its weapons stockpile as "seriously disturbing international peace and security" [S/RES/181 (7 August 1963), preambular paragraph 8] and had "solemnly" called upon States to cease selling and shipping arms, ammunition of all types and military vehicles to South Africa [S/RES/181 (7 August 1963), operative paragraph 3]. The status of this embargo as "voluntary" appears clear with the benefit of hindsight: see, e.g., S/RES/418 (4 November 1977), preambular paragraph 8 ["*Recalling ... resolution 181 ... and other resolutions concerning a voluntary arms embargo against South Africa*" (emphasis added)]. At the time the resolution was adopted, however, the Council's call upon States to halt sales and shipments of arms and related equipment to South Africa could conceivably have been interpreted to fall within the scope of Article 41. Some Council members made a point, however, of clarifying that as far as they were concerned the embargo was not mandatory and did not constitute action under Chapter VII of the Charter of the United Nations. See, e.g., the statements of the United States and the United Kingdom: S/PV.1056 (7 August 1963), paragraphs 23-30 [statement by the representative of the United States, noting in paragraph 26 that "a number of Council members [were] not prepared to agree that the situation in South Africa [was] one which [called] for the kind of action appropriate in cases of

resolutions addressing the situation in that country. On 31 October 1977, the Security Council recalled its earlier calls to the South African régime to end violence against its people and to take urgent steps to eliminate *apartheid* and racial discrimination,⁴ and noted that it was convinced that the violence and repression by the South African racist régime had greatly aggravated the situation in South Africa and would lead to violent conflict and racial conflagration with serious international repercussions.⁵ At the same time, the Council also reaffirmed the legitimacy of the struggle of the South African people for the elimination of *apartheid* and racial discrimination,⁶ and affirmed the right to the exercise self-determination by all the people of South Africa, irrespective of race, colour or creed.⁷ The Council then strongly condemned the South African régime for its repression of its black people and of other opponents of apartheid,⁸ expressed support for and solidarity with those people

threats to the peace or breaches of the peace under Chapter VII of the United Nations Charter”, and observing in paragraphs 27 and 28 that the fact that operative paragraphs 2 and 3 of the resolution called upon Member States to take certain action did not give those paragraphs a “mandatory character” and that the words “call upon” do not carry “mandatory force”, paragraphs 33-38 [statement by the representative of the United Kingdom, agreeing with the representative of the United States that the resolution just adopted and the measures which it called upon all States to take “should not be regarded as being a resolution within Chapter VII of the Charter”]. It is noteworthy, however, that subsequent Council decisions suggested that the embargo carried legal implications beyond those of a mere “voluntary” measure [see, e.g., S/RES/282 (23 July 1970), operative paragraph 3: “*Condemns* the violations of the arms embargo called for in resolutions 181, 182 and 191”]. The embargo was also reaffirmed and strengthened in a number of subsequent resolutions [see: S/RES/182 (4 December 1963), operative paragraph 5; S/RES/191 (18 June 1964), operative paragraph 12; S/RES/282 (23 July 1970), operative paragraphs 2, 4]. Furthermore, the Council authorised the establishment of both an expert panel [S/RES/182 (4 December 1963), operative paragraph 6] and an expert committee [see S/RES/191 (18 June 1964), operative paragraph 8] to look into measures that might help to address the situation in South Africa. Ultimately, however, as mentioned above, the Council used hindsight to characterise the earlier embargo as “voluntary” when it imposed the subsequent, “mandatory” embargo: see S/RES/418 (4 November 1977), preambular paragraphs 8, 9.

⁴ S/RES/417 (31 October 1977), preambular paragraph 1.

⁵ S/RES/417 (31 October 1977), preambular paragraph 4.

⁶ S/RES/417 (31 October 1977), preambular paragraph 5.

⁷ S/RES/417 (31 October 1977), preambular paragraph 6.

⁸ S/RES/417 (31 October 1977), operative paragraph 1.

struggling for the elimination of *apartheid*,⁹ and made certain demands of the South African régime.¹⁰

Five days later, on 4 November 1977, the Security Council again called upon the South African Government to end violence against its people and to take urgent steps to eliminate apartheid and racial discrimination.¹¹ The Council then recognized that the military build-up by South Africa and its persistent acts of aggression against neighbouring States seriously disturbed the security of those States,¹² further recognized that it was necessary to strengthen the existing voluntary arms embargo in order to prevent a further aggravation of the grave situation in South Africa,¹³ and strongly condemned the Government of South Africa for its acts of repression, its continuance of the system of apartheid and its attacks against neighbouring States.¹⁴ The Council then noted that it was acting under Chapter VII of the Charter of the United Nations,¹⁵ determined that, having regard to the policies and acts of the South African Government, the acquisition by South Africa of arms and related

⁹ S/RES/417 (31 October 1977), operative paragraph 2.

¹⁰ S/RES/417 (31 October 1977), operative paragraph 3. Those demands included that the racist régime of South Africa: (a) End violence and repression against black people and opponents of *apartheid*; (b) Release all persons imprisoned under arbitrary security laws and all those detained for their opposition to *apartheid*; (c) Cease indiscriminate violence against peaceful demonstrators against *apartheid*, murders in detention and torture of political prisoners; (d) Abrogate bans on organizations and the news media opposed to *apartheid*; (e) Abolish the "Bantu education" system and all other measures of *apartheid* and racial discrimination; and (f) Abolish the policy of bantustanization, abandon the policy of *apartheid* and ensure majority rule based on justice and equality.

¹¹ S/RES/418 (4 November 1977), preambular paragraph 1.

¹² S/RES/418 (4 November 1977), preambular paragraph 2.

¹³ S/RES/418 (4 November 1977), preambular paragraph 3.

¹⁴ S/RES/418 (4 November 1977), preambular paragraph 6.

¹⁵ S/RES/418 (4 November 1977), preambular paragraph 10.

matériel constituted a threat to international peace and security,¹⁶ and applied mandatory sanctions against South Africa.¹⁷

2.2 The objective of the South Africa sanctions régime

The explicit objective of the sanctions régime was to prevent South Africa from acquiring arms, so as to diminish the South African Government's capacity to pose a threat to international peace and security.¹⁸ A number of other objectives were also implicit in the Council's decisions in relation to the situation in South Africa, however, including: eliminating the policy of *apartheid*;¹⁹ the establishment of a democratic society;²⁰ and the enjoyment of equal rights by all South African citizens.²¹

2.3 The scope of the South Africa sanctions régime

The scope of the mandatory sanctions régime imposed against South Africa remained consistent throughout the sixteen and a half years from the time of its establishment to its termination. Under the sanctions régime, the Security Council required all States to

¹⁶ S/RES/418 (4 November 1977), operative paragraph 1. The Council reaffirmed its determination of this threat in resolution 421 (1977): S/RES/421 (9 December 1977), preambular paragraph 1. In resolution 473 (1980) the Council also characterised apartheid as seriously disturbing international peace and security: S/RES/473 (13 June 1980), operative paragraph 3.

¹⁷ S/RES/418 (4 November 1977), operative paragraph 2.

¹⁸ S/RES/418 (4 November 1977), operative paragraphs 1 and 2; S/RES/558 (13 December 1984), preambular paragraphs 4, 5.

¹⁹ S/RES/418 (4 November 1977), preambular paragraph 1; S/RES/473 (13 June 1980), preambular paragraph 7, operative paragraph 4, 7; S/RES/569 (26 July 1985), operative paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7; S/RES/765 (16 July 1992), operative paragraph 7.

²⁰ See, e.g., S/RES/473 (13 June 1980), preambular paragraph 7, operative paragraph 4; S/RES/569 (26 July 1985), preambular paragraph 5, operative paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7.

²¹ See, e.g., S/RES/473 (13 June 1980), preambular paragraph 7, operative paragraphs 4 and 7; S/RES/569 (26 July 1985), preambular paragraph 5; S/RES/591 (28 November 1986), preambular paragraph 7.

stop providing South Africa with arms and related *matériel* of all types,²² and to refrain from helping South Africa to develop nuclear weapons.²³ Although the United Nations General Assembly adopted annual resolutions urging the Security Council to strengthen the mandatory sanctions régime,²⁴ the Council could not achieve the necessary agreement to take such action. A number of draft resolutions were put to the vote which would have

²² S/RES/418 (4 November 1977), operative paragraph 2. In that provision the Council noted that the phrase “arms and related *matériel*” included weapons, ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for all of those articles. The Council subsequently clarified that the phrase also included nuclear, strategic and conventional weapons, all military, paramilitary police vehicles and equipment, as well as spare parts for all of those items: see S/RES/591 (28 November 1986), operative paragraph 4.

²³ S/RES/418 (4 November 1977), operative paragraph 4.

²⁴ See, e.g., A/RES/32/105 (14 December 1977): *Policies of Apartheid of the Government of South Africa*, Section G: Economic Collaboration with South Africa, operative paragraph 1; A/RES/33/183 (24 January 1979): *Policies of Apartheid of the Government of South Africa*, Section E: Oil Embargo against South Africa; A/RES/34/93 (12 December 1979): *Policies of Apartheid of the Government of South Africa*, Section C: International Conference on Sanctions against South Africa, Section D: Arms embargo against South Africa, Section F: Oil Embargo against South Africa; A/RES/35/206 (16 December 1980): *Policies of Apartheid of the Government of South Africa*, Section C: Comprehensive sanctions against South Africa; A/RES/36/172 (17 December 1981): *Policies of Apartheid of the Government of South Africa*, Section B: International Year of Mobilization for sanctions against South Africa, Section D: Comprehensive sanctions against South Africa; A/RES/37/69 (9 December 1982): *Policies of Apartheid of the South African Government*, Section C: Comprehensive and mandatory sanctions against South Africa; A/RES/38/39: *Policies of Apartheid of the South African Government* (5 December 1983), Section D: Sanctions against South Africa; A/RES/39/72: *Policies of Apartheid of the South African Government* (13 December 1984), Section A: Comprehensive sanctions against the apartheid régime and support to the liberation struggle in South Africa; A/RES/40/64: *Policies of Apartheid of the South African Government* (10 December 1985), Section A: Comprehensive sanctions against the racist régime of South Africa; A/RES/41/35: *Policies of Apartheid of the South African Government* (10 November 1986), Section B: Comprehensive and mandatory sanctions against the racist régime of South Africa; A/RES/42/23 (20 November 1987): *Policies of Apartheid of the South African Government*, Section C: Comprehensive and mandatory sanctions against the racist régime of South Africa; A/RES/43/50 (5 December 1988): *Policies of Apartheid of the South African Government*, Section C: Comprehensive and mandatory sanctions against the racist régime of South Africa; A/RES/44/27 (22 November 1989): *Policies of Apartheid of the South African Government*, Section C: Comprehensive and mandatory sanctions against the racist régime of South Africa; A/RES/45/176 (19 December 1990): *Policies of Apartheid of the South African Government*, Section B: Concerted and effective measures aimed at eradicating apartheid, Section F: Oil Embargo against South Africa; A/RES/46/79 (13 December 1991): *Policies of Apartheid of the South African Government*, Section E: Oil Embargo against South Africa; A/RES/47/116 (18 December 1992): *Policies of Apartheid of the South African Government*, Section D: Oil Embargo against South Africa. The General Assembly’s calls upon the Security Council to strengthen the sanctions régime ceased in 1993, when the General Assembly adopted a resolution welcoming the process of transition to democracy that had begun in

expanded the scope of the South Africa sanctions, but none of them were adopted due either to the failure to gain the requisite votes or to the exercise of the veto by a permanent member of the Council.²⁵ Nevertheless, despite the fact that the Council did not strengthen the scope of the mandatory sanctions, it did adopt decisions calling upon, requesting or urging States to implement a broad range of additional voluntary measures, including arms-

South Africa and lifting the sanctions which it had called upon Member States to apply against the Government of South Africa: see A/RES/48/1 (8 October 1993).

²⁵

See, e.g., S/18705: draft resolution on mandatory sanctions against South Africa, sponsored by Argentina, Congo, Ghana, United Arab Emirates and Zambia. In the vote on that draft resolution, held during the 2738th meeting of the Council on 20 February 1987, there were ten votes in favour to three against (including the United Kingdom and the United States) with two abstentions [under the draft resolution, the Council would have required States to apply additional mandatory sanctions against South Africa in accordance with Article 41, including targeted economic and financial sanctions such as a prohibition upon the importation from South Africa of South Africa currency, military articles, uranium and coal, and a prohibition upon the export to South Africa of computers, oil and petroleum products, as well as upon the provision of loans to the South African Government]; S/19585: draft resolution on sanctions against South Africa, sponsored by Algeria, Argentina, Nepal, Senegal, Yugoslavia and Zambia. In the vote on that draft resolution, held during the 2797th meeting of the Council on 8 March 1988, there were ten votes in favour to two against, (the United Kingdom and the United States) with three abstentions [under the draft resolution, the Council would have required States to apply additional mandatory sanctions against South Africa in accordance with Article 41, including targeted economic and financial sanctions such as a prohibition upon investment in South Africa, upon all forms of military, police or intelligence cooperation, including the sale of computer equipment, and upon the export to South Africa of oil].

related sanctions,²⁶ financial sanctions,²⁷ sporting and cultural sanctions,²⁸ and economic sanctions.²⁹

2.4 The administration, monitoring and enforcement of the South Africa sanctions régime

During the course of its application of sanctions against South Africa, the Security Council bestowed responsibility for the administration, implementation and enforcement of sanctions upon the Secretary-General and the South Africa Sanctions Committee.

2.4.1 The Role of the Secretary-General

During the course of the South Africa sanctions régime the Security Council requested the Secretary-General to report to it on the implementation of its resolutions relating to the sanctions, including resolutions 418 (1977), 473 (1980), 558 (1984), 569 (1985), 591 (1986).³⁰

²⁶ The Security Council requested States to apply the following measures related to South Africa's military activities: (a) to prohibit the import from South Africa of arms and related *matériel* [S/RES/558 (13 December 1984), operative paragraph 2]; (b) to prohibit the conclusion of contracts in the nuclear field with South Africa [S/RES/569 (26 July 1985), operative paragraph 6(e)]; (c) to prohibit the export of spare parts for embargoed aircraft and other military equipment belonging to South Africa [S/RES/591 (28 November 1986), operative paragraph 2]; and (d) to prohibit the import of South African armaments for display in international fairs and exhibitions [S/RES/591 (28 November 1986), operative paragraph 7].

²⁷ The Security Council urged States to apply the following measures related to South Africa's financial activities: (a) to suspend investment in South Africa [S/RES/569 (26 July 1985), operative paragraph 6(a)]; (b) to prohibit the sale of currency originating in South Africa [S/RES/569 (26 July 1985), operative paragraph 6(b)]; and (c) to suspend guaranteed export loans to South Africa [S/RES/569 (26 July 1985), operative paragraph 6(d)].

²⁸ In resolution 569 (1985) the Council urged States to restrict sporting and cultural relations with South Africa: S/RES/569 (26 July 1985), operative paragraph 6(c).

²⁹ The Council urged States to apply the following economic sanctions against South Africa: (a) to prohibit the sale to South Africa of computer equipment that might be used by the army and the police [S/RES/569 (26 July 1985), operative paragraph 6(f)]; and (b) to prohibit the export to South Africa of items destined for the military and police forces of South Africa [S/RES/591 (28 November 1986), operative paragraph 3].

³⁰ S/RES/418 (4 November 1977), operative paragraph 6; S/RES/473 (13 June 1980), operative paragraph 12; S/RES/558 (13 December 1984), operative paragraph 4 [in this case requesting the Secretary-General to report to the South Africa Sanctions Committee, rather than directly to the

2.4.2 The South Africa Sanctions Committee

A month after it imposed the mandatory arms embargo against South Africa, the Security Council decided to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee to oversee the implementation of the sanctions against South Africa (the “South Africa Sanctions Committee” or the “421 Committee”).³¹ The Committee was asked to report to the Council on its work and with its observations and recommendations and to undertake the following tasks: a) To examine the reports of the Secretary-General report on the implementation of the sanctions;³² b) To make recommendations on how the arms embargo might be made more effective;³³ and c) To seek information from States regarding steps taken by them to implement the sanctions.³⁴ In subsequent resolutions the committee was also asked: d) To redouble its efforts to ensure the strict implementation of the sanctions by recommending measures to close any “loop-holes”.³⁵

The 421 Committee remains the longest serving Sanctions Committee, having existed for seventeen years. Despite its longevity, however, the 421 Committee was considerably less active than the Southern Rhodesia Committee. During its tenure the Committee held 113 formal meetings,³⁶ issued four reports,³⁷ and made a handful of

Council, on the implementation of resolution 558 (1984)]; S/RES/569 (26 July 1985), operative paragraph 8; S/RES/591 (28 November 1986), operative paragraph 14.

³¹ S/RES/421 (9 December 1977), operative paragraph 1.

³² *Ibid*, operative paragraph 1(a).

³³ *Ibid*, operative paragraph 1(b).

³⁴ *Ibid*, operative paragraph 1(c).

³⁵ See, e.g., S/RES/473 (13 June 1980), operative paragraph 11; S/RES/591 (28 November 1986), operative paragraph 13.

³⁶ *Index to Proceedings of the Security Council for 1994* (1995) United Nations, New York, p. xii [containing a list of the meetings held by the 421 Committee in 1994 – the year in which it was dissolved].

³⁷ S/13708 (26 December 1979) [*Report of the Security Council Committee established pursuant to resolution 421 (1977) concerning South Africa on nuclear collaboration with South Africa*]; S/13721 (31 December 1979) [*Report of the Security Council Committee established*

recommendations to the Council regarding potential action in relation to the sanctions régime, a number of which were incorporated into subsequent Security Council resolutions.³⁸

2.4.3 States

The Security Council called upon States to take a number of actions to strengthen the implementation, monitoring and enforcement of the sanctions régime against South Africa. When the sanctions were applied, the Council called upon all States to review contractual arrangements with and licences granted to South Africa relating to the manufacture and maintenance of arms, ammunition of all types and military equipment and vehicles, with a view to terminating them.³⁹ The Council also called upon all States, including States non-members of the United Nations, to act strictly in accordance with the sanctions.⁴⁰

In December 1977, the Council called upon all States to cooperate fully with the 421 Committee in the effective implementation of the sanctions, including by supplying

pursuant to resolution 421 (1977) concerning South Africa, SCOR, 35th year, supplement for July, August and September 1980: S/14179 (19 September 1980): Report of the Security Council Committee established pursuant to resolution 421 (1977) concerning South Africa on ways and means of making the mandatory arms embargo against South Africa more effective]; S/21015 (11 December 1989) annex: Report of the Security Council Committee established pursuant to resolution 421 (1977) concerning South Africa [containing a report of the activities of the Committee from 1980-1989].

³⁸ S/16680 (13 December 1984): Letter dated 13 December 1984 from the Chairman of the Security Council Committee established by resolution 421 (1977) concerning the question of South Africa [transmitting a recommendation adopted at the 63rd meeting of the Committee]; S/18474 (24 November 1986): Letter dated 24 November 1986 from the Chairman of the Security Council Committee established by resolution 421 (1977) concerning the question of South Africa [transmitting a draft resolution on the arms embargo against South Africa adopted by the Committee at its 75th meeting]; S/19396 (30 December 1987): Letter dated 30 December 1987 from the Chairman of the Security Council Committee established by resolution 421 (1977) concerning the question of South Africa [transmitting a statement concerning the question of South Africa].

³⁹ S/RES/418 (4 November 1977), operative paragraph 3.

⁴⁰ S/RES/418 (4 November 1977), operative paragraph 5.

information sought by that Committee.⁴¹ In November 1986, the Council called upon States to prohibit the export of spare parts for embargoed aircraft and other military equipment belonging to South Africa and any official involvement in the maintenance and service of such equipment.⁴² The Council further urged all States to prohibit the export to South Africa of items destined for the military or police forces in South Africa, or which had a military capacity and were intended for military purposes, such as aircraft and parts thereof, electronic and telecommunication equipment, computers and 4-wheel drive vehicles.⁴³ The Council also requested all States to implement strictly the sanctions and to refrain from any cooperation in the nuclear field with South Africa,⁴⁴ to ensure that their national legislation and policy directives contained penalties to deter violations of the sanctions,⁴⁵ and to adopt measures to investigate past and prevent future violations of sanctions, as well as to strengthen machinery for the implementation of sanctions, with a view to the effective monitoring and verification of transfers of arms and other equipment in violation of the sanctions.⁴⁶

2.5 Termination of the South Africa sanctions régime

The sanctions against South Africa were ultimately terminated in May 1994, when the Council welcomed the first all-race multiparty election in South Africa and the inauguration of a united, democratic, non-racial government of South Africa.⁴⁷ At the same

⁴¹ S/RES/421 (9 December 1977), operative paragraph 2.

⁴² S/RES/591 (28 November 1986), operative paragraph 2.

⁴³ S/RES/591 (28 November 1986), operative paragraph 3.

⁴⁴ S/RES/591 (28 November 1986), operative paragraph 5.

⁴⁵ S/RES/591 (28 November 1986), operative paragraph 10.

⁴⁶ S/RES/591 (28 November 1986), operative paragraph 11.

⁴⁷ S/RES/919 (26 May 1994), operative paragraph 1.

time the Council also dissolved the South Africa Sanctions Committee.⁴⁸ A month later the Security Council removed “The question of South Africa” from the list of matters of which it was seized.⁴⁹

2.6 Notable aspects of the South Africa sanctions régime

The South Africa sanctions régime is notable largely for the perception that it played a role in bringing about the demise of *apartheid*.⁵⁰ It is unclear, however, to what extent the U.N.’s arms embargo was a critical factor in bringing about change. The embargo without doubt restricted the South African government’s ability to gain easy access to arms which

⁴⁸ *Ibid*, operative paragraph 3.

⁴⁹ S/RES/930 (27 June 1994), operative paragraph 4.

⁵⁰ For examples of the view that the sanctions régime played a part in the ultimate demise of apartheid, see the following statements from the 3379th meeting of the Security Council, during which the Council adopted resolution 919 (1994), terminating the sanctions and dissolving the South Africa Sanctions Committee: S/PV.3379, p. 3 [“We would ... like to take this opportunity to extend our sincere thanks to the Security Council, to the Secretary-General of the United Nations ... and the United Nations as a whole for the outstanding contribution this Organization has made in bringing South Africa to the happy situation in which it is today”: Mr. Thabo Mbeki, Deputy President of South Africa], p. 4 [“Sanctions have played an effective supportive role in the struggle against apartheid”: Ambassador Legwaila, Botswana], p. 13 [“[F]or years the international community had worked tirelessly, persistently and intelligently to bring an end to the formidable power of apartheid. This time, at least, our sanctions yielded unambiguous and incontrovertible results”: Ambassador Snoussi, Morocco], p.14 [“The Security Council played a significant role in hastening the pace of change in South Africa. The arms embargo was symbolic of the Council’s abhorrence of apartheid as well as other crimes perpetrated against the black majority in South Africa ... Today, the Council can take pride in the fact that it has contributed substantially to the elimination of apartheid”: Ambassador Ansari, India], p. 17 [“Despite the loopholes and weakness in the implementation of the embargo, and various violations, we believe that the arms embargo against apartheid played a significant role in bringing about change and reducing the level of violence and human suffering in southern Africa”: Mr. Abdul Minty, Director of the World Campaign against Military and Nuclear Collaboration with South Africa], p. 24 [“The past initiatives of this main organ of the United Nations against the former Government of South Africa, which we are now scratching from the books, contributed to paving the way to the new South Africa”: Ambassador Sardenberg, Brazil], p. 26 [“The United Nations arms embargoes and related restrictions imposed by this body against South Africa contributed significantly to the demise of apartheid”: Ambassador Gnehm, the United States of America], p.27 [“[W]e, the family of nations, played our own modest role in ostracizing the régime of apartheid and imposing sanctions on it, thereby driving it into an isolated corner reserved for pariahs of the world community”: Ambassador Kovanda, the Czech Republic], p. 28 [“It is not often that the Security Council decides to lift a sanctions régime. It is always a source of gratification, because it demonstrates that the objectives sought by the international community in imposing these special measures have at last been attained”: Ambassador Yañez Barnuevo, Spain].

would have assisted it to oppress further the South African people and to take additional aggressive action against other States.⁵¹ It is probable, however, that other forms of sanctions against South Africa, including the stronger sanctions called for by the General Assembly, as well as other forms of non-forceful action employed by States, organisations and groups of individuals, played at least as significant a role in bringing about the ultimate demise of *apartheid* as the Security Council's mandatory arms embargo.

The South Africa sanctions régime contributed to the evolution of the United Nations sanctions system in a number of ways. First, it represented the first sanctions régime to be imposed against a State Member of the United Nations. Second, when the Council outlined the scope of the South Africa sanctions régime it introduced a formulation that has become standard in subsequent sanctions régimes - the phrase: '*Decides* that all States shall'. Third, the Council's calls to States to apply a mixture of "voluntary" sanctions in addition to the mandatory arms embargo created a web of "sanctions" whose legal implications appeared to differ substantially.⁵²

⁵¹ Throughout the period during which the mandatory sanctions régime was applied the South African Government continued to engage in military aggression, against a number of African States, including Namibia, Angola, Lesotho, Botswana, Zambia and Mozambique.

⁵² Although the Council had also adopted voluntary and mandatory sanctions against the illegal minority régime in Southern Rhodesia, most of the voluntary sanctions preceded the application of mandatory sanctions. In its actions relating to South Africa, however, the Council adopted a range of voluntary sanctions both before and after it imposed the mandatory sanctions.

3. *The Iraq sanctions régime*

The Security Council imposed sanctions against Iraq on 6 August 1990, four days after Saddam Hussein had ordered his troops to invade Kuwait. The sanctions régime consisted of a complex mixture of comprehensive economic and financial sanctions, with the objective of bringing about Iraq's withdrawal from Kuwait and the reinstatement of the Kuwaiti Government. After the Gulf War, which led to the withdrawal of Iraqi troops from Kuwait, the sanctions were retained. The new objectives of the sanctions régime were to bring about the establishment of a Compensation Commission to administer reparations claims arising from the Gulf War and to disarm Iraq of nuclear, chemical and biological weapons, as well as of its anti-ballistic missiles with a range of greater than 150 km.

The Iraq sanctions régime continued to be applied without major modification for a period of twelve years. Although the Security Council expanded the scope of the initial exemptions from the sanctions and established the Oil-for-Food Programme, with the aim of enabling Iraq to export a limited quantity of oil in order to finance the purchase of humanitarian goods, it was not until April 2003 that the sanctions were altered significantly. At that time, shortly after the overthrow of Saddam Hussein's régime by a coalition consisting largely of United States and British forces, the bulk of the sanctions were terminated, with only the arms sanctions continuing. At the same time, the Council also introduced new financial sanctions, with the aim of gaining access to funds belonging to the former Iraqi régime. The Security Council also foreshadowed the termination of the Iraq Sanctions Committee, and six months later that Committee was replaced by a new Committee, which was tasked with a smaller range of oversight responsibilities relating to the new financial sanctions.

3.1 The constitutional basis for imposing sanctions against Iraq

When Iraq invaded Kuwait, on 2 August 1990, the Security Council immediately adopted resolution 660 (1990).¹ In that resolution, the Council determined that Iraq's invasion of Kuwait constituted a breach of international peace and security,² noted that it was acting in accordance with Articles 39 and 40 of the Charter of the United Nations,³ and demanded the immediate, unconditional withdrawal of Iraqi forces from Kuwaiti territory.⁴ Four days later, when Iraq had not withdrawn from Kuwait, the Council adopted resolution 661 (1990), in which it noted that it was acting under Chapter VII of the Charter,⁵ determined that Iraq had failed to comply with the demands outlined in resolution 660 (1990),⁶ and imposed sanctions.⁷ In subsequent decisions clarifying or modifying the scope of the sanctions, adopted prior to the outbreak of Gulf War hostilities, the Council again invoked Chapter VII of the Charter.⁸

After the conclusion of Gulf War hostilities, the constitutional basis for the continued application of sanctions under Chapter VII appeared to shift subtly. In resolution 687 (1991), the Council referred to the threat posed to peace and security in the area by weapons of mass destruction, as well as to the need to establish a zone free of such weapons in the Middle East.⁹ It then noted that it was acting under Chapter VII of the

¹ S/RES/660 (2 August 1990).

² S/RES/660 (2 August 1990), preambular paragraph 2.

³ S/RES/660 (2 August 1990), preambular paragraph 3.

⁴ S/RES/660 (2 August 1990), operative paragraph 1.

⁵ S/RES/661 (6 August 1990), preambular paragraph 7.

⁶ S/RES/661 (6 August 1990), operative paragraph 1.

⁷ S/RES/661 (6 August 1990), operative paragraphs 2-4.

⁸ See, e.g., S/RES/666 (13 September 1990), preambular paragraph 6; S/RES/670 (25 September 1990), preambular paragraph 13.

⁹ S/RES/687 (3 April 1991), preambular paragraph 17. This reference to a threat to international peace and security raises the question of whether the cessation of Gulf War hostilities also

Charter,¹⁰ before reaffirming the continued application of the sanctions.¹¹ In subsequent resolutions clarifying or modifying the scope and application of sanctions, the Council has continued to follow the practice of invoking Chapter VII of the Charter.¹² In one of the resolutions expanding the scope of the sanctions, the Council also determined that the situation continued to constitute a threat to international peace and security.¹³

In April 2003, shortly after the overthrow of Saddam Hussein's régime, the Council reaffirmed the importance of the disarmament of Iraqi weapons of mass destruction and of eventual confirmation of the disarmament of Iraq.¹⁴ It then determined that the situation in Iraq, although improved, continued to constitute a threat to international peace and security,¹⁵ and noted that it was acting under Chapter VII of the Charter,¹⁶ before proceeding to modify the Iraq sanctions régime. In November 2003, when the Council established a new Sanctions Committee to succeed the 661 Committee, it again determined

signified the effective dissipation of the breach of international peace and security that the Council had identified in resolution 660 (1990). If so, then it was necessary for the Council to identify an alternative threat to or breach of international peace and security to which the continued application of sanctions would respond. It is also possible, however, that the Council's affirmation of the thirteen prior resolutions on the situation [S/RES/687 (3 April 1991), operative paragraph 1] was meant to signify that the breach of international peace and security was continuing. According to such a reading of the situation, the breach of international peace and security would not fully dissipate until Iraq complied with its obligations under resolution 687 (1991).

¹⁰ S/RES/687 (3 April 1991), preambular paragraph 26.

¹¹ S/RES/687 (3 April 1991), operative paragraphs 20-24.

¹² See, e.g., S/RES/986 (14 April 1995), preambular paragraph 6; S/RES/1051 (27 March 1996), preambular paragraph 6; S/RES/1137 (12 November 1997), preambular paragraph 12; S/RES/1284 (17 December 1999), preambular paragraph 11; S/RES/1409 (14 May 2002), preambular paragraph 6; S/RES/1454 (30 December 2002), preambular paragraph 6.

¹³ S/RES/1137 (12 November 1997), preambular paragraph 11.

¹⁴ S/RES/1483 (22 May 2003), preambular paragraph 3.

¹⁵ S/RES/1483 (22 May 2003), preambular paragraph 17.

¹⁶ S/RES/1483 (22 May 2003), preambular paragraph 18.

that the situation in Iraq continued to constitute a threat to international peace and security,¹⁷ and again noted that it was acting under Chapter VII of the Charter.¹⁸

3.2 The objectives of the Iraq sanctions régime

The initial objective of the Iraq sanctions régime was to ensure the withdrawal of Iraqi forces from Kuwait and the reinstatement of the Kuwaiti government.¹⁹ After the Gulf War, the objectives of the sanctions régime were modified to include: i) the establishment of a compensation fund to cover the losses incurred by foreign governments, nationals and corporations;²⁰ and ii) the complete disarmament of Iraq.²¹ In order to comply with its obligation to disarm completely, Iraq was required to undertake the following measures: (a) To accept unconditionally the destruction, removal or rendering harmless of all chemical and biological weapons²² and all ballistic missiles with a range greater than one hundred and fifty kilometres;²³ (b) To agree to on-site inspection of its armament facilities;²⁴ (c) To refrain from the use, development, construction or acquisition of chemical and biological weapons,²⁵ ballistic missiles with a range greater than one hundred and fifty kilometres,²⁶ and nuclear weapons,²⁷ and (d) To submit to future, ongoing monitoring and verification of its

¹⁷ S/RES/1518 (24 November 2003), preambular paragraph 4.

¹⁸ S/RES/1518 (24 November 2003), preambular paragraph 5.

¹⁹ S/RES/661 (6 August 1990), operative paragraph 2.

²⁰ S/RES/687 (3 April 1991), operative paragraph 22.

²¹ S/RES/687 (3 April 1991), operative paragraphs 8, 9, 10, 12, 22.

²² S/RES/687 (3 April 1991), operative paragraph 8(a).

²³ S/RES/687 (3 April 1991), operative paragraph 8(b).

²⁴ S/RES/687 (3 April 1991), operative paragraph 9(a).

²⁵ S/RES/687 (3 April 1991), operative paragraph 10.

²⁶ S/RES/687 (3 April 1991), operative paragraph 10.

²⁷ S/RES/687 (3 April 1991), operative paragraph 12.

compliance with the obligation to refrain from using, developing, constructing or acquiring those weapons.²⁸

In late-1997, when it imposed additional targeted travel sanctions against particular Iraqi officials, the Council made it clear that the objective of those sanctions was to ensure that Iraq cooperated unconditionally with the United Nations Special Commission (UNSCOM), whose task it was to monitor and verify Iraq's compliance with its disarmament obligations under the sanctions régime.²⁹ In late-1999, when the Council created the United Nations Monitoring Verification and Inspection Commission (UNMOVIC) to replace UNSCOM, it provided that if Iraq were to cooperate with UNMOVIC and the IAEA and if they were both to report to the Council that the system of ongoing monitoring and verification was fully operational, then the elements of the sanctions régime not connected to arms and related *matériel* would be suspended for a renewable period of 120 days.³⁰ By providing for this possibility, the Council signalled that the major objective of the components of the sanctions régime that were not directed at arms and related *matériel* was to ensure that the system of monitoring and verification was fully operational.

²⁸ S/RES/687 (3 April 1991), operative paragraphs 10, 12.

²⁹ S/RES/1137 (12 November 1997), operative paragraph 6 [deciding that the targeted travel sanctions would terminate one day after the Executive Chairman of UNSCOM reported to the Council that Iraq was cooperating unconditionally with UNSCOM]. For further details relating to UNSCOM, see section 3.4, below.

³⁰ S/RES/1284 (17 December 1999), operative paragraph 33. The elements of the sanctions regime which would not be suspended were those relating to the prohibition of arms, arms-related material and materials which might be used in the development of chemical and biological weapons, ballistic missiles with a range greater than one hundred and fifty kilometres and nuclear weapons. In resolution 687 (1991) the Council had reserved the right to maintain these sanctions until such time as it made a further decision. For further details relating to UNMOVIC, see section 3.4, below.

The Security Council did not articulate explicit objectives connected to the arms sanctions that were maintained against Iraq following the overthrow of Saddam Hussein. It did reaffirm, however, that Iraq must meet its disarmament obligations.³¹ The newly imposed financial sanctions seemed to have the objective of facilitating Iraq's development in the post-war environment, as funds and assets frozen in accordance with the sanctions were to be transferred to the Development Fund for Iraq.³²

3.3 The scope of the Iraq sanctions régime

The Iraq sanctions régime consists of a complex blend of comprehensive economic and financial sanctions. Although the Council has tinkered relatively little with the broad contours of the Iraq sanctions régime, both the Council and the Iraq Sanctions Committee have taken steps that have resulted in subtle modifications to the types of products and commodities that are exempt from the sanctions, as well as to the procedures for determining whether particular products and commodities are exempt. Each modification to the list of exemptions or the exemptions process has resulted in a subtle modification of the scope of the sanctions régime.

Modifications to the overall scope of the Iraq sanctions régime

In resolution 661 (1990), the Council required all States to prevent: (a) The import of all goods and commodities originating in Iraq,³³ (b) Activities designed to promote export

³¹ S/RES/1483 (22 May 2003), operative paragraph 11. See also preambular paragraph 3 (reaffirming the importance of the disarmament of Iraqi weapons of mass destruction and of eventual confirmation of the disarmament of Iraq).

³² S/RES/1483 (22 May 2003), operative paragraph 23 (noting, however, that funds or assets subject to prior judicial, administrative, or arbitral lien or judgment would not be so transferred).

³³ S/RES/661 (6 August 1990), operative paragraph 3(a).

from Iraq of any goods or commodities;³⁴ (c) The export to Iraq of any goods and commodities, with the exception of certain exemptions;³⁵ and (d) The provision to the Government of Iraq, to any commercial, industrial or public utility undertaking in Iraq or Kuwait, or to persons or bodies within Iraq or Kuwait, of any funds or other financial or economic resources.³⁶ A month later, the Council clarified that the sanctions régime required all States to prevent aircraft destined for Iraq or Kuwait from departing from or over-flying their territory.³⁷

In April 1991, after the Gulf War hostilities had ended, the Council narrowed slightly the scope of the sanctions régime. In resolution 687 (1991), the Council decided to continue the sanctions against the sale or supply to Iraq of commodities or products and against financial transactions related to the sale or supply of commodities or products.³⁸ In that same

³⁴ S/RES/661 (6 August 1990), operative paragraph 3(b).

³⁵ S/RES/661 (6 August 1990), operative paragraph 3(c). The Council exempted from the sanctions “supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs”. The question of whether and when such “humanitarian circumstances” existed became the subject of subsequent enquiry after the conclusion of the Gulf War. For further details, see notes 54 to 57, below.

³⁶ S/RES/661 (6 August 1990), operative paragraph 4. The Council provided, however, that these prohibitions would not apply to payments exclusively for strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs: see also operative paragraph 4.

³⁷ S/RES/670 (25 September 1990), operative paragraphs 3-6. The Council provided, however, for exemptions from those sanctions in the following circumstances: (a) if the aircraft was carrying food in humanitarian circumstances and was authorized by the 661 Committee in accordance with resolution 666 (1990) [S/RES/670 (25 September 1990),operative paragraph 3]; (b) if the aircraft was carrying supplies intended strictly for medical purposes or solely for the United Nations Iran-Iraq Military Observer Group [S/RES/670 (25 September 1990),operative paragraph 3]; (c) if the aircraft was landing in order to permit inspection to ensure that it was not carrying cargo in violation of the sanctions [S/RES/670 (25 September 1990),operative paragraph 4(a)]; (d) if the flight had been approved by the 661 Committee [S/RES/670 (25 September 1990),operative paragraph 4(b)]; (e) if the flight was certified by the United Nations as solely for the purpose of the Military Observer Group [S/RES/670 (25 September 1990),operative paragraph 4(c)].

³⁸ Interestingly, the Council’s continuation of the sanctions was implicit rather than explicit. Its endorsement of the continuation of these measures can be deduced from the following factors: (a) the Council’s affirmation of the thirteen resolutions it had adopted to date on the situation between Iraq and Kuwait, which included resolutions 661 (1990) and 670 (1990) [S/RES/687 (3 April 1991), operative paragraph 1]; and (b) the Council’s decision that upon approval by the Council of the programme for the establishment and operation of the Compensation

resolution, however, the Council clarified that the following would be exempted from the sanctions: (a) Medicine and health supplies;³⁹ (b) Foodstuffs notified to the Iraq Sanctions Committee;⁴⁰ (c) Materials and supplies for essential civilian needs;⁴¹ and (d) Exports from Iraq of commodities or products approved by the Iraq Sanctions Committee in order to assure adequate financial resources to purchase medicine and health supplies, foodstuffs and materials and supplies for essential civilian needs.⁴²

At the same time the Council also clarified that, in order to ensure that Iraq did not increase its capacity to re-arm, States were required to continue to prevent the sale, supply or provision to Iraq of: (a) Arms and related *matériel*;⁴³ (b) Items relating to chemical and biological weapons, ballistic missiles with a range greater than one hundred and fifty kilometres, and nuclear weapons;⁴⁴ (c) Technology relating to arms and related material, chemical and biological weapons, ballistic missiles with a range greater than one hundred and fifty kilometres, and nuclear weapons;⁴⁵ and (d) Personnel or training or technical support services relating to arms and related material, chemical and biological weapons, ballistic missiles with a range greater than one hundred and fifty kilometres, and nuclear weapons.⁴⁶

Commission and upon Council agreement that Iraq had complied with all of its disarmament obligations, the sanctions would have no further effect [S/RES/687 (3 April 1991), operative paragraph 22].

³⁹ S/RES/687 (3 April 1991), operative paragraph 20.

⁴⁰ *Ibid.*

⁴¹ *Ibid.* Such materials and supplies were exempted subject to the proviso that they would be approved by the Iraq Sanctions Committee under the no-objection procedure.

⁴² S/RES/687 (3 April 1991), operative paragraph 23.

⁴³ S/RES/687 (3 April 1991), operative paragraph 24(a).

⁴⁴ S/RES/687 (3 April 1991), operative paragraph 24(b).

⁴⁵ S/RES/687 (3 April 1991), operative paragraph 24(c).

⁴⁶ S/RES/687 (3 April 1991), operative paragraph 24(d).

In October 1992, the Council applied a form of temporary additional financial sanctions, requiring all States in whose jurisdiction there were funds from the sale of Iraqi petroleum or petroleum products, belonging to the Government of Iraq or of its State bodies, corporations, or agencies and paid for since the date sanctions were imposed, to transfer those funds to the escrow account established under the initial attempt at the Oil-for-Food Programme.⁴⁷ At the same time the Council also required all States in which there were petroleum or petroleum products belonging to the Government of Iraq or of its State bodies, corporations, or agencies, to purchase or arrange for the sale of such petroleum or petroleum products and transfer the proceeds from that purchase or sale to the escrow account established under the initial attempt at the Oil-for-Food Programme.⁴⁸

In late-1997 the Council strengthened the scope of the sanctions in response to certain actions taken by Iraq to interfere with the work of UNSCOM.⁴⁹ In an effort to induce Iraqi compliance with UNSCOM's work the Council applied targeted travel sanctions against all Iraqi officials and members of the Iraqi armed forces who were responsible for or had participated in those instances of interference.⁵⁰

⁴⁷ S/RES/778 (2 October 1992), operative paragraph 1. By operative paragraph 6 of the same resolution, however, the Council provided that such measures would be suspended in the event that the Iraq sanctions were lifted or that an effective Oil-for-Food Programme were to enter into operation, in either of which cases the funds transferred should be reimbursed.

⁴⁸ S/RES/778 (2 October 1992), operative paragraph 2. As noted in the previous note, however, operative paragraph 6 of the same resolution provided that in the event that the Iraq sanctions were lifted or that an effective Oil-for-Food Programme were to enter into operation, the funds transferred should be reimbursed.

⁴⁹ The Iraqi government had sought to impose conditions upon its cooperation with UNSCOM, and its officials had denied two UNSCOM officials the right to enter Iraq on the grounds of their nationality, had prevented other UNSCOM inspectors from entering certain inspection sites, and had tampered with surveillance equipment belonging to UNSCOM: see S/RES/1137 (12 November 1997), preambular paragraphs 1, 2, operative paragraph 1.

⁵⁰ S/RES/1137 (12 November 1997), operative paragraph 4. Under operative paragraph 5 of resolution 1137 (1997) the Council also decided to designate in consultation with UNSCOM a list of those to whom the travel sanctions would apply. The Iraq Sanctions Committee would then develop guidelines and procedures for the implementation of the sanctions. It is

Modifications to exemptions and to the exemptions process

When the Council first imposed sanctions against Iraq, it exempted supplies that were “intended strictly for medical purposes and, in humanitarian circumstances, foodstuffs”.⁵¹ It also exempted payments relating to the supply of such exempted supplies.⁵² Almost two months later, when the Council applied aircraft sanctions, it clarified that those sanctions did not apply to flights undertaken for the purpose of transporting supplies exempted from the sanctions régime.⁵³

After the conclusion of Gulf War hostilities, the Secretary-General commissioned a report to explore whether the “humanitarian circumstances” foreshadowed in resolution 661 (1990) did in fact exist, thus enabling the provision to Iraq of foodstuffs.⁵⁴ The report concluded that humanitarian circumstances did exist, warning that the Iraqi people might soon face a “catastrophe”, including “epidemic and famine” if “massive life-supporting

noteworthy that the Council threatened twice to employ additional measures before eventually applying the targeted travel sanctions: see S/RES/1115 (21 June 1997), operative paragraph 6; S/RES/1134 (23 October 1997), operative paragraph 6.

⁵¹ S/RES/661 (6 August 1990), operative paragraph 3(c). Note the following path to review of/restrictions upon medical supplies: S/RES/666 (13 September 1990), operative paragraph 8 [recalling that resolution 661 (1990) did not apply to supplies intended strictly for medical purposes, but recommending that medical supplies should be exported under the strict supervision of the Government of the exporting State or by appropriate humanitarian agencies]; S/RES/687 (3 April 1991), operative paragraphs 8-13, 24, 25 and 27 [qualifying the arms and related sanctions against Iraq with the aim of preventing the Iraqi Government from developing nuclear, chemical or biological weapons or anti-ballistic missiles with a range of greater than 150 km]; S/23036 (13 September 1991) [first report of the 661 Committee on the implementation of the arms and related sanctions against Iraq, defining dual-use items as “items meant for civilian use but with potential for diversion or conversion to military use”: see paragraph 7 of the report]; S/RES/1051 (27 March 1996), operative paragraph 5; S/RES/1284 (17 December 1999), operative paragraph 17; S/RES/1409 (14 May 2002), S/RES/1447 (4 December 2002); S/RES/1454 (30 December 2002).

⁵² S/RES/661 (6 August 1990), operative paragraph 4.

⁵³ S/RES/670 (25 September 1990), operative paragraphs 3, 4.

⁵⁴ S/22366 (20 March 1991), annex: *Report to the Secretary-General on humanitarian needs in Kuwait and Iraq in the immediate post-crisis environment by a mission to the area led by Mr. Martti Ahtisaari* (the “Ahtisaari report”).

needs” were not met.⁵⁵ After considering the report, the Iraq Sanctions Committee decided that humanitarian circumstances did in fact exist and thus permitted States to export foodstuffs to Iraq, as long as they notified the Committee of any such exports.⁵⁶ The Committee also decided that States could export to Iraq “civilian and humanitarian supplies”, upon approval by it under the “no-objection procedure”.⁵⁷ This decision of the Committee was endorsed by the Security Council in April 1991, in resolution 687 (1991).⁵⁸

The Oil-for-Food Programme

The Council first attempted to implement an Oil-for-Food Programme in August 1991, when it authorized all States, subject to certain conditions, to permit the import of petroleum and petroleum products in order to finance the purchase of foodstuffs, medicines and materials and supplies for essential civilian needs.⁵⁹ The proceeds from the exports from Iraq of petroleum and petroleum products were to be placed in an escrow account, which would be administered by the Secretary-General and would finance, in addition to the purchase of the items mentioned above, the payment of Iraq’s various liabilities under the Compensation Fund scheme elaborated by the Council in resolution 687 (1991).⁶⁰ One

⁵⁵ The Ahtisaari report, *ibid*, paragraph 37.

⁵⁶ S/22400 (22 March 1991): *Note by the Secretary-General*, annex [containing a letter dated 22 March 1991 from the President of the Security Council, informing the Secretary-General of a decision that the Iraq Sanctions Committee had taken that same day, during its 36th meeting, with regard to the determination of humanitarian needs in Iraq]. The Security Council had empowered the Committee to make such a decision in S/RES/666 (13 September 1990), operative paragraphs 1, 5.

⁵⁷ *Ibid*.

⁵⁸ S/RES/687 (3 April 1991), operative paragraph 20.

⁵⁹ S/RES/706 (15 August 1991), operative paragraphs 1, 2.

⁶⁰ S/RES/706 (15 August 1991), operative paragraphs 1-4.

month later, the Council approved recommendations made by the Secretary-General for a scheme to implement such an Oil-for-Food Programme.⁶¹

Ultimately, however, the Iraqi Government refused to cooperate with the proposed scheme, and the Council resorted to an interim arrangement to finance the programme, according to which States were required to transfer to the escrow account any funds in their jurisdiction which represented the proceeds of sales of Iraqi petroleum products that had taken place since the application of sanctions.⁶² At the same time, States in which Iraqi petroleum or petroleum products were present were also required to purchase or arrange for the sale of those items and to transfer the proceeds to the escrow account.⁶³

In April 1995, the Council made another, more successful attempt to implement an “Oil-for-Food Programme” (OFFP). Under the OFFP, Iraq was permitted to export a limited amount of oil in order to finance the purchase of items exempted from the sanctions régime, as well as the activities of entities entrusted with overseeing Iraq’s compliance with the provisions of resolution 687 (1991).⁶⁴ The Council adopted numerous resolutions

⁶¹ S/RES/712 (19 September 1991), operative paragraph 3.

⁶² S/RES/778 (2 October 1992), operative paragraph 1.

⁶³ S/RES/778 (2 October 1992), operative paragraph 2.

⁶⁴ S/RES/986 (14 April 1995), operative paragraphs 1, 2, 7, 8, 9, 10. In addition to financing the purchase by the Iraqi Government of medicine, health supplies, foodstuffs and supplies for essential civilian needs [S/RES/986 (14 April 1995), operative paragraph 8(a)], the proceeds from the sale of oil would fund: (a) the distribution of humanitarian relief to the three northern governorates not under the complete control of the Iraqi Government [S/RES/986 (14 April 1995), operative paragraph 8(b)]; (b) the Compensation Fund established to address claims for Iraqi reparations arising from the Gulf War [S/RES/986 (14 April 1995), operative paragraph 8(c)]; (c) the costs of on-the-ground inspection and auditing of the implementation in Iraq of the OFFP [S/RES/986 (14 April 1995), operative paragraph 8(d)]; (d) the operating costs of UNSCOM [S/RES/986 (14 April 1995), operative paragraph 8(e)]; (e) reasonable expenses incurred in order to export the permitted oil from Iraq [S/RES/986 (14 April 1995), operative paragraph 8(f)]; and (f) to replenish the accounts of frozen Iraqi assets from which funds had been transferred to the escrow account established under resolution 687 (1991) in order to cover the costs of the Compensation Commission and UNSCOM under resolution 778 (1992) [S/RES/986 (14 April 1995), operative paragraph 8(g)].

extending the OFFP and honing the procedures for its implementation.⁶⁵ The modifications to the procedures for the implementation of the OFFP resulted in subtle modifications of the scope of the sanctions régime, as they clarified the products and commodities to which the sanctions did not apply and they improved and simplified the process by which decisions were made regarding whether potential “dual-use” items were subject to or exempt from the sanctions. The major innovation to the process for implementing the OFFP was the establishment of the Goods Review List (“GRL”) and the adoption of procedures for its application.⁶⁶ The GRL contained an exhaustive list of potential “dual-use” items, the supply to Iraq of which first had to be approved via a process which involved careful consideration of the items by UNMOVIC and the IAEA, which then recommended the approval or refusal of the application by the 661 Committee.⁶⁷ Anything not on the list was considered to be exempt from the sanctions, thus requiring simple notification to the Committee. After the

The Security Council had attempted to establish an earlier version of the OFFP in 1991 [see S/RES/706 (15 August 1991); S/RES/712 (19 September 1991)], but it had not been possible to implement the programme in the absence of cooperation from the Iraqi Government. In order to ensure an alternative source of funding for the activities of the Compensation Commission and UNSCOM, the Council adopted resolution 778 (1992), requiring States in which funds belonging to Iraq had been frozen in accordance with the sanctions régime to transfer those funds temporarily to the escrow account established to fund, *inter alia*, the activities of the Commissions: see resolution 778 (1992) (2 October 1992).

⁶⁵ See, e.g., S/RES/1111 (4 June 1997); S/RES/1143 (4 December 1997); S/RES/1153 (20 February 1998); S/RES/1210 (24 November 1998); S/RES/1242 (21 May 1999); S/RES/1281 (10 December 1999); S/RES/1284 (17 December 1999); S/RES/1302 (8 June 2000); S/RES/1330 (5 December 2000); S/RES/1352 (1 June 2001); S/RES/1360 (3 July 2001); S/RES/1382 (29 November 2001); S/RES/1409 (14 May 2002); S/RES/1447 (4 December 2002); S/RES/1454 (30 December 2002); S/RES/1472 (28 March 2003).

⁶⁶ The GRL was foreshadowed in: S/RES/1352 (1 June 2001), operative paragraph 2(a); and S/RES/1382 (29 November 2001), operative paragraph 2. It was adopted in S/RES/1409 (14 May 2002), operative paragraph 2, and was refined in S/RES/1454 (30 December 2002), operative paragraph 1.

⁶⁷ For the GRL itself, see: S/2002/515 [as adopted by S/RES/1409 (14 May 2002)]; and S/RES/1454 (30 December 2002), Annex A. For the procedures relating to the application of the GRL, see: S/RES/1409 (14 May 2002), attachment; S/RES/1454 (30 December 2002), Annex B.

introduction of the GRL process, the flow of exempt goods and commodities to Iraq under the OFFP increased substantially.⁶⁸

In May 2003, after the formal completion of the second Gulf War hostilities, the Council decided to terminate the sanctions against Iraq, with the exception of sanctions against arms and related *matériel*.⁶⁹ At the same time, the Council imposed new financial sanctions in connection with the situation in Iraq, requiring all Member States to freeze any funds or other financial assets of economic resources in their jurisdiction belonging to the former Government of Iraq and its various entities, as well as those removed from Iraq by Saddam Hussein and other senior officials of the former Iraqi régime and their immediate family members.⁷⁰ Member States were also required to transfer those frozen funds, financial assets and economic resources to the Development Fund for Iraq.⁷¹

3.4 The administration, monitoring and enforcement of the Iraq sanctions régime

During the course of the Iraq sanctions régime, the Security Council has bestowed responsibility for the administration, implementation and enforcement of sanctions upon a wide range of actors. These actors have included the Secretary-General and States, as well as a number of subsidiary entities, such as the Iraq Sanctions Committee, the United Nations Special Commission (UNSCOM) and its successor the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), the Office of the Iraq Programme

⁶⁸ For details of the improvements resulting from the introduction of the GRL, see the report of the Secretary-General dated 12 November 2002: S/2002/1239 (12 November 2002).

⁶⁹ S/RES/1483 (22 May 2003), operative paragraph 10. By the same provision, the Council provided an exemption from the arms sanctions for arms and related matériel required by the Coalition Authority.

⁷⁰ S/RES/1483 (22 May 2003), operative paragraph 23.

⁷¹ *Ibid.*

(OIP), which has responsibility for ensuring the efficient implementation of the Oil-for-Food Programme (OFFP), and a monitoring mechanism. The Council has also established *ad hoc* panels of experts to explore particular questions relating to the implementation of the sanctions.

3.4.1 The Iraq Sanctions Committees

Since sanctions were first applied against Iraq in August 1990, the Security Council has established two Sanctions Committees to oversee their administration. The first Sanctions Committee – the 661 Committee – was created at the same time as the Iraq sanctions régime and undertook a diverse collection of oversight responsibilities until it was dissolved in November 2003, following the termination of all but the arms sanctions and the application of new financial sanctions. The second Sanctions Committee, the 1518 Committee, was established in November 2003 in order to oversee the administration of the new financial sanctions.

i. The 661 Committee

When the Security Council imposed sanctions against Iraq it also decided to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee to oversee the implementation of the sanctions.⁷² The Committee (the “Iraq Sanctions Committee” or the “661 Committee”) was to report to the Council on its work and with its observations and recommendations, and would undertake the following tasks: (a) To examine the reports of the Secretary-General report on the implementation of the

⁷² S/RES/661 (6 August 1990), operative paragraph 6. The Committee adopted guideline for the conduct of its work at its 2nd meeting, on 17 August 1990. For a copy of the guidelines, see: S/1996/700 (26 August 1996), annex: *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, p. 31 (Annex I).

sanctions;⁷³ and (b) To seek from all States information regarding action taken by them to implement the sanctions.⁷⁴

Between its establishment in August 1990 and its dissolution in November 2003, the 661 Committee was tasked with a vast array of additional responsibilities, including the following: (a) Determining whether humanitarian circumstances had arisen requiring exemptions for food-stuffs;⁷⁵ (b) Considering reports by the Secretary-General on humanitarian circumstances in Iraq and making appropriate recommendations to the Security Council for meeting humanitarian needs;⁷⁶ (c) Examining requests by States for special assistance under Article 50 of the United Nations Charter and making appropriate recommendations to the Security Council;⁷⁷ (d) Considering applications for exemptions from the prohibition upon the export to Iraq of products and commodities;⁷⁸ (e) Considering applications for exceptions to the prohibition upon the import from Iraq of products and commodities;⁷⁹ (f) Monitoring the implementation of the prohibition upon the provision to Iraq of arms and related *matériel*;⁸⁰ (g) Developing, in cooperation with UNSCOM and the IAEA, a mechanism for monitoring the sale or supply to Iraq of items that might be used for armament (“dual use items”);⁸¹ (h) Monitoring the sale and supply of oil from Iraq to Turkey

⁷³ S/RES/661 (6 August 1990), operative paragraph 6(a).

⁷⁴ S/RES/661 (6 August 1990), operative paragraph 6(b).

⁷⁵ S/RES/666 (13 September 1990), operative paragraph 1.

⁷⁶ S/RES/666 (13 September 1990), operative paragraph 5.

⁷⁷ S/RES/669 (24 September 1990), preambular paragraph 4.

⁷⁸ S/RES/687 (3 April 1991), operative paragraph 20.

⁷⁹ S/RES/687 (3 April 1991), operative paragraph 23.

⁸⁰ S/RES/700 (17 June 1991), operative paragraph 5.

⁸¹ S/RES/715 (11 October 1991), operative paragraph 7. That mechanism was eventually established by the Council in resolution 1051 (1996): S/RES/1051 (27 March 1997), operative paragraph 1. For further details on the mechanism, see section 3.4., below.

under the Oil-for-Food Programme (OFFP);⁸² (i) Developing “expedited procedures” for the implementation of the OFFP;⁸³ (j) Approving transactions under the OFFP for, *inter alia*, the sale of oil and the purchase of permitted goods;⁸⁴ (k) Assisting the monitoring mechanism as required;⁸⁵ (l) Reporting on the implementation of each renewed phase of the OFFP;⁸⁶ (m) Processing expeditiously applications under the OFFP scheme;⁸⁷ (n) Authorizing reasonable expenses related to the Hajj pilgrimage, to be met by funds in escrow account;⁸⁸ (o) Approving contracts for parts and equipment to enable Iraq to meet its permitted ceiling of oil exports;⁸⁹ (p) Approving lists of humanitarian items (including foodstuffs, pharmaceutical and medical supplies, as well as basic or standard medical and agricultural equipment and basic or standard educational items) which did not need to be submitted for approval and which could simply be notified to the Secretary-General and

⁸² S/RES/986 (14 April 1995), operative paragraph 6.

⁸³ S/RES/986 (14 April 1995), operative paragraph 12 [the procedures were outlined in S/1996/636, S/1997/417]; S/RES/1143 (4 December 1997), operative paragraph 9 [the procedures were outlined in S/1998/92 (January 30 1998)]; and S/RES/1153 (20 February 1998), operative paragraph 15 [requesting the Committee to implement those procedures].

⁸⁴ S/RES/986 (14 April 1995), operative paragraph 1(a).

⁸⁵ S/RES/1051 (27 March 1996), operative paragraph 10. See also S/1995/1017 (December 17 1995).

⁸⁶ The Committee was requested to report on the implementation of each phase of the OFFP until the Phase that began on 5 December 2002 [interestingly, the Council did not request that the Committee report on the implementation of that phase, which it approved in S/RES/1447 (4 December 2002)]. See, e.g., S/RES/1111 (4 June 1997), operative paragraph 4; S/RES/1143 (4 December 1997), operative paragraph 5; S/RES/1153 (20 February 1998), operative paragraph 14; S/RES/1210 (4 November 1998), operative paragraph 10; S/RES/1242 (21 May 1999), operative paragraph 10; S/RES/1281 (10 December 1999), operative paragraph 10; S/RES/1302 (8 June 2000), operative paragraph 6; S/RES/1330 (5 December 2000), operative paragraph 6; S/RES/1360 (3 July 2001), operative paragraph 6; S/RES/1409 (14 May 2002), operative paragraph 7. The Committee’s reports on the implementation of the OFFP are listed in note 105, below.

⁸⁷ S/RES/1111 (4 June 1997), operative paragraph 5.

⁸⁸ S/RES/1153 (20 February 1998), operative paragraph 3; S/RES/1210 (24 November 1998), operative paragraph 3.

⁸⁹ S/RES/1175 (19 June 1998), operative paragraph 2.

financed under resolution 986 (1995);⁹⁰ (q) Appointing a group of experts to approve contracts for parts and equipment necessary in order to increase Iraq's exports of petroleum and petroleum products;⁹¹ (r) Deciding upon all applications in respect of humanitarian and civilian needs within two working days of receiving them through the Secretary-General;⁹² (s) Approving, on the basis of proposals from the Secretary-General, lists of basic water and sanitation supplies that did not need to be submitted to it for approval;⁹³ (t) Approving, also on the basis of proposals from the Secretary-General, lists of basic electricity and housing supplies that did not need to be submitted to it for approval;⁹⁴ (u) Reviewing applications in an expeditious manner, in order to decrease the level of applications on hold, and continuing to improve the approval process;⁹⁵ (v) Reviewing the "Goods Review List" and the procedures for its implementation and recommending modifications thereto;⁹⁶ (w) Determining procedures to facilitate the temporary use of funds from the OFFP to provide for the humanitarian needs of the Iraqi people whilst conflict prevented the Iraqi Government from implementing the OFFP;⁹⁷ (x) Reviewing, under a 24-hour no-objection procedure, applications outside the Oil-for-Food Programme by United Nations agencies, programmes and funds, other international organizations and NGOs for exporting to Iraq

⁹⁰ S/RES/1284 (17 December 1999), operative paragraph 17. Applications to export to Iraq items which were potentially dual-use items could not, however, be processed via this simple notification procedure.

⁹¹ S/RES/1284 (17 December 1999), operative paragraph 18.

⁹² S/RES/1284 (17 December 1999), operative paragraph 25.

⁹³ S/RES/1302 (8 June 2000), operative paragraph 8. Applications to export to Iraq items which were potentially dual-use items could not, however, be processed via this simple notification procedure.

⁹⁴ S/RES/1330 (5 December 2000), operative paragraph 10. Applications to export to Iraq items which were potentially dual-use items could not, however, be processed via this simple notification procedure.

⁹⁵ S/RES/1330 (5 December 2000), operative paragraph 13.

⁹⁶ S/RES/1454 (30 December 2002), operative paragraph 2.

emergency humanitarian supplies and equipment, other than medicines, health supplies and foodstuffs;⁹⁸ (y) Monitoring the implementation of the temporary plans for enabling the funds under the OFFP to be mobilized to address the humanitarian situation in Iraq for a period of 45 days during the 2003 invasion of Iraq by United States and coalition forces;⁹⁹ and (z) Identifying individuals and entities whose funds, financial assets and economic resources should be frozen and transferred to the Development Fund for Iraq, in accordance with the financial sanctions imposed by resolution 1483 (2003).¹⁰⁰

In May 2003, shortly after the conclusion of the second Gulf War, when the Security Council terminated the majority of the sanctions against Iraq, it also decided that the 661 Committee would be terminated in six months.¹⁰¹ The Committee was thus terminated and dissolved on 21 November 2003. During its tenure, the 661 Committee held more than 230 meetings¹⁰² and issued seven annual reports.¹⁰³ It also issued more than forty

⁹⁷ S/RES/1472 (28 March 2003), operative paragraph 4(g).

⁹⁸ S/RES/1472 (28 March 2003), operative paragraph 7.

⁹⁹ S/RES/1472 (28 March 2003), operative paragraph 9.

¹⁰⁰ S/RES/1483 (22 May 2003), operative paragraph 19. As noted above, the additional financial sanctions were imposed by operative paragraph 23 of the same resolution. See section 3.3, above.

¹⁰¹ S/RES/1483 (22 May 2003), operative paragraph 18. The reason for delaying the dissolution of the Committee for six months was likely to enable it to continue undertaking responsibilities in connection with the Oil-for-Food Programme, which itself was to be phased out over a six-month period. See:

¹⁰² The Committee had held 236 formal meetings to the end of July 2002: see A/57/2 (2002): *Report of the Security Council: 16 June 2001-31 July 2002*, p. 52.

¹⁰³ Pursuant to the note by the President of the Security Council of 29 March 1995 (S/1995/234) on the need for greater transparency in the work of the Council's Sanctions Committees, the 661 Committee began submitting "annual" reports in 1996. Strictly speaking, the 661 Committee's reports have not been truly annual, as all but the most recent report cover periods of longer than a year. For the reports, see: S/1996/700 (26 August 1996), annex: *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, containing a factual summary of the Committee's activities since its establishment, but with a focus on activities in 1995 and early-1996 (hereafter "*Report of the 661 Committee for 1990-1996*"); S/1997/672 (28 August 1997), annex: *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, containing a summary of the Committee's activities from August 1996 to July 1997 (hereafter "*Report of the 661 Committee for 1996-1997*"); S/1998/1239 (31 December

reports on the implementation of the arms and related sanctions against Iraq,¹⁰⁴ more than twenty reports on the implementation of the Oil-for-Food Programme (OFFP),¹⁰⁵ and

1998), annex: *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, containing a summary of the Committee's activities from August 1997 to July 1998 (hereafter "*Report of the 661 Committee for 1997-1998*"); S/2000/133 (18 February 2000), annex: *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, containing a summary of the Committee's activities from 1 August 1998 to 20 November 1999 (hereafter "*Report of the 661 Committee for 1998-1999*"); S/2001/738 (27 July 2001), annex: *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, containing a summary of the Committee's activities from 21 November 1999 to 30 November 2000 (hereafter "*Report of the 661 Committee for 1999-2000*"); S/2002/647 (10 June 2002), annex: *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, containing a factual summary of the Committee's activities from 1 December 2000 to 31 December 2001 (hereafter "*Report of the 661 Committee for 2000-2001*"); S/2003/300 (12 March 2003), annex: *Annual report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, containing a factual summary of the Committee's activities from 1 January 2002 to 31 December 2002 (hereafter "*Annual report of the 661 Committee for 2002*").

¹⁰⁴ These reports have been issued at ninety day intervals since the Council adopted resolution 687 (1991). As with annual reports, these reports are forwarded to the President of the Security Council by the Chairman of the Committee, before being circulated as annexes to official documents of the Security Council. The document numbers and dates on which the reports were issued as official Council documents are as follows: S/23036 (13 September 1991); S/23279 (11 December 1991); S/23708 (12 March 1992); S/24083 (11 June 1992); S/24545 (10 September 1992); S/24912 (4 December 1992); S/25442 (19 March 1993); S/25930 (7 June 1993); S/26430 (7 September 1993); S/26874 (14 December 1993); S/1994/274 (8 March 1994); S/1994/695 (10 June 1994); S/1994/1027 (4 September 1994); S/1994/1367 (1 December 1994); S/1995/169 (1 March 1995); S/1995/442 (30 May 1995); S/1995/744 (28 August 1995); S/1995/992 (28 November 1995); S/1996/127 (23 February 1996); S/1996/361 (21 May 1996); S/1996/676 (20 August 1996); S/1996/950 (17 November 1996); S/1997/141 (19 February 1997); S/1997/374 (16 May 1997); S/1997/637 (12 August 1997); S/1997/949 (3 December 1997); S/1998/108 (9 February 1998); S/1998/387 (12 May 1998); S/1998/729 (7 August 1998); S/1998/1055 (7 November 1998); S/1999/110 (3 February 1999); S/1999/519 (4 May 1999); S/1999/848 (4 August 1999); S/1999/1113 (1 November 1999); S/2000/72 (1 February 2000); S/2000/365 (1 May 2000); S/2000/748 (28 July 2000); S/2000/1033 (26 October 2000); S/2001/72 (23 January 2001); S/2001/400 (24 April 2001); S/2001/721 (23 July 2001); S/2001/1003 (24 October 2001); S/2002/84 (18 January 2002); S/2002/476 (23 April 2002); S/2002/802 (22 July 2002); S/2002/1167 (18 October 2002); S/2003/61 (17 January 2003); S/2003/507 (29 April 2003).

¹⁰⁵ As with the annual reports and the reports on the implementation of the arms sanctions, these reports have been circulated as annexes to official documents of the Security Council. The relevant document numbers and dates are as follows: S/1997/213 (11 March 1997), annex [containing the 661 Committee's 90-day report on the implementation of the OFFP]; S/1997/417 (30 May 1997), annex [containing the 661 Committee's 180-day report on the implementation of the OFFP]; S/1997/692 (8 September 1997), annex [containing the 661 Committee's 90-day report on the implementation of Phase I of the OFFP]; S/1997/942 (2 December 1997), annex [containing the 661 Committee's 180-day report on the implementation of Phase II of the OFFP]; S/1998/187 (3 March 1998), annex [containing the 90-day report of the 661 Committee on the implementation of Phase III of the OFFP]; S/1998/469 (4 June 1998), annex [containing the 180-day report of the 661 Committee on the implementation of Phase III of the OFFP]; S/1998/813 (27 August 1998), annex [containing the 90-day report of the 661 Committee on the

several other reports on improvements made to its working procedures to expedite the approval process for sending humanitarian supplies to Iraq.¹⁰⁶

The 661 Committee summarised its most significant activities in its annual reports. Its first report, issued in August 1996, provides a detailed picture of the Committee's work between 1990 and 1996.¹⁰⁷ In its first report the Committee: summarised its major activities;¹⁰⁸ reported steps taken by other actors to monitor and enforce the implementation of sanctions;¹⁰⁹ noted alleged violations of the sanctions;¹¹⁰ and outlined the process that had

implementation of Phase IV of the OFFP]; S/1998/1104 (20 November 1998), annex [containing the 180-day report of the 661 Committee on the implementation of Phase IV of the OFFP]; S/1999/279 (16 March 1999), annex [containing the 90-day report of the 661 Committee on the implementation of Phase V of the OFFP]; S/1999/582 (19 May 1999), annex [containing the 180-day report of the 661 Committee on the implementation of Phase V of the OFFP]; S/1999/907 (24 August 1999), annex [containing the 90-day report of the 661 Committee on the implementation of Phase VI of the OFFP]; S/1999/1177 (17 November 1999), annex [containing the 180-day report of the 661 Committee on the implementation of Phase VI of the OFFP]; S/2000/242 (23 March 2000), annex [containing the 90-day report of the 661 Committee on the implementation of Phase VII of the OFFP]; S/2000/536 (5 June 2000), annex [containing the 180-day report of the 661 Committee on the implementation of Phase VII of the OFFP]. After June 2000 the Council requested the 661 Committee to report to it just once before the end of the each phase of implementation: S/RES/1302 (8 June 2000), operative paragraph 6; S/RES/1330 (5 December 2000), operative paragraph 6; S/RES/1360 (3 July 2001), operative paragraph 6; S/RES/1382 (29 November 2001), operative paragraph 1; S/RES/1409 (14 May 2002), operative paragraph 7. With the exception of the report for Phase X, which covered a 150-day period, the reports for Phases VIII-XII therefore covered 180 days. The Committee thus issued the following reports on Phases VIII-XII: S/2001/321 (3 April 2001), annex [containing the 180-day report of the 661 Committee on the implementation of Phase VIII of the OFFP]; S/2001/842 (5 September 2001), annex [containing the 180-day report of the 661 Committee on the implementation of Phase IX of the OFFP]; S/2001/1341 (31 December 2001), annex [containing the 150-day report of the 661 Committee on the implementation of Phase X of the OFFP]; S/2002/1261 (18 November 2002), annex [containing the 180-day report of the 661 Committee on the implementation of Phase XI of the OFFP]; S/2003/331 (18 March 2003), annex [containing the 180-day report of the 661 Committee on the implementation of Phase XII of the OFFP].

¹⁰⁶ See, e.g., S/1998/92 (30 January 1998), annex [containing the *Report of the 661 Committee pursuant to paragraph 9 of resolution 1143 (1997) on refining and clarifying its working procedures*]; S/1998/336 (20 April 1998), annex [containing the report of the 661 Committee pursuant to paragraph 15 of resolution 1153 (1998) on measures taken to implement refinements of its working procedures].

¹⁰⁷ *Report of the 661 Committee for 1990-1996*, above note 103.

¹⁰⁸ *Ibid.*, paragraphs 25-77.

¹⁰⁹ *Ibid.*, paragraphs 78-92.

¹¹⁰ *Ibid.*, paragraphs 93-100.

been put in place to consider applications under Article 50 of the Charter.¹¹¹ The Committee's observations and recommendations were few, however. It stated that close cooperation with Member States was essential to enhance the effective implementation of the sanctions, and it observed that, as the responsibility for enforcing the sanctions régime lay with States, the Committee's role was primarily to provide assistance to States in enforcing the sanctions.¹¹² In subsequent reports the Committee continued to record its activities and provide short observations and recommendations. Its observations and recommendations included the following: that close cooperation and interaction with Member States was particularly important;¹¹³ and that the Committee would work closely with relevant actors, including the Secretary-General, the Office of the Iraq Programme and the Government of Iraq, to implement the OFFP in order to improve the humanitarian situation in Iraq.¹¹⁴

ii. The 1518 Committee

In November 2003 the Security Council decided to establish a new Committee, in accordance with rule 28 of its provisional rules of procedure, to oversee the administration of the continuing sanctions against Iraq.¹¹⁵ The 1518 Committee was to continue the task that had been performed by the 661 Committee, of identifying individuals and entities whose

¹¹¹ *Ibid*, paragraphs 101-110.

¹¹² *Ibid*, paragraphs 111-114.

¹¹³ *Report of the 661 Committee for 1996-1997*, above note 103, paragraph 51; *Report of the 661 Committee for 1997-1998*, above note 103, paragraph 76.

¹¹⁴ *Report of the 661 Committee for 1997-1998*, above note 103, paragraph 77; *Report of the 661 Committee for 1998-1999*, above note 103, paragraph 62; *Report of the 661 Committee for 1999-2000*, above note 103, paragraph 48; *Report of the 661 Committee for 2000-2001*, above note 103, paragraph 62; *Annual report of the 661 Committee for 2002*, above note 103, paragraph 71.

¹¹⁵ S/RES/1518 (24 November 2003), operative paragraph 1.

funds, financial assets and economic resources should be frozen and transferred to the Development Fund for Iraq, in accordance with the financial sanctions imposed by resolution 1483 (2003). The new Committee was also to report to the Council on its work, and it would use as a basis for beginning its work the guidelines and definitions that had been employed by the 661 Committee. In addition, the Security Council foreshadowed the possibility that the 1518 Committee might be tasked with observing compliance with the ongoing arms sanctions against Iraq.

3.4.2 Actors involved in the implementation and administration of disarmament objectives: the International Atomic Energy Agency (IAEA), the United Nations Special Commission (UNSCOM) and the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC)

Under resolution 687 (1991), the task of monitoring and overseeing Iraq's compliance with its disarmament obligations was to be assumed by a Special Commission, which would be established according to the recommendations of the Secretary-General.¹¹⁶ That Commission would cooperate in the implementation of its tasks with the International Atomic Energy Agency (IAEA), which would monitor and verify Iraq's compliance with its obligation not to possess, develop or acquire nuclear weapons.¹¹⁷ The United Nations Special Commission (UNSCOM) was duly established¹¹⁸ and oversaw the monitoring of the Iraq disarmament program until it was replaced by the United Nations Monitoring,

¹¹⁶ S/RES/687 (3 April 1991), operative paragraph 9(b)(i).

¹¹⁷ S/RES/687 (3 April 1991), operative paragraph 13.

¹¹⁸ The Secretary-General's recommendations, contained in a report of 17 May 1991 pursuant to paragraph 9(b) of resolution 687, were approved by the Council in S/RES/699 (June 17 1991), operative paragraph 1.

Verification and Inspection Commission, “UNMOVIC”, in late-1999.¹¹⁹ UNSCOM’s mandate was to carry out immediate on-site inspections based on Iraq’s declarations regarding its weapons holdings and programmes, to undertake the destruction, removal or rendering harmless of all nuclear, biological or chemical weapons and anti-ballistic missiles with a range of greater than 150 k.m., or components for the manufacture or development thereof, and to develop a plan for the future ongoing monitoring and verification of Iraq’s compliance with its disarmament obligations under resolution 687 (1991).¹²⁰

UNSCOM was able to play a relatively constructive role in monitoring Iraq’s compliance with its disarmament obligations under the sanctions régime.¹²¹ Ultimately, however, UNSCOM confronted major difficulties in undertaking its mandated activities, due to Iraq’s refusal to allow it to resume operations after UNSCOM inspectors were withdrawn from Iraq in late-1998.¹²² In December 1999 the Council decided to replace

¹¹⁹ The Security Council replaced UNSCOM by UNMOVIC in S/RES/1284 (December 17 1999), operative paragraph 1. For further details relating to both UNSCOM and UNMOVIC, see discussion below in the Iraq case-study.

¹²⁰ A detailed examination of the activities of UNSCOM is beyond the scope of this thesis. For details regarding UNSCOM’s mandate, see: S/RES/687 (3 April 1991), operative paragraphs 8-13. For a concise summary of UNSCOM’s activities, see: *Report of the first Panel established pursuant to the note by the President of the Security Council on 30 January 1999, concerning disarmament and current and future ongoing monitoring and verification issues*, below note 145. For a personal account of UNSCOM’s operations, see: Butler, Richard, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (2000) Public Affairs, NY.

¹²¹ For an overview of UNSCOM’s achievements, as well as the questions remaining in relation to the extent to which Iraq had complied fully with its obligations, see: *Report of the first Panel established pursuant to the note by the President of the Security Council on 30 January 1999, concerning disarmament and current and future ongoing monitoring and verification issues*, below note 145, paragraphs 12-30.

¹²² The Security Council established a number of reporting requirements for UNSCOM. UNSCOM thus submitted the following reports: one report pursuant to resolution 687 (1991) on its activities [S/23165 (25 October 1991)]; nine half-yearly reports pursuant to resolution 699 (1991) on its activities [S/23268 (4 December 1991); S/24108/Corr.1 (16 April 1992); S/24984 (17 December 1992); S/25977 (21 June 1993); S/26910 (21 December 1993); S/1994/750 (24 June 1994); S/1994/1422 (15 December 1994); S/1995/494 (20 June 1995); and S/1995/1038 (17 December 1995)]; eight half-yearly reports pursuant to resolution 715 (1991) on the implementation of its plan to ensure ongoing monitoring and Verification of Iraq’s disarmament

UNSCOM with UNMOVIC. Drawing upon the recommendations made by a panel that was established to explore the disarmament, monitoring and verification issues arising from the implementation of the Iraq sanctions,¹²³ UNMOVIC was created with the aim of establishing a reinforced system of ongoing monitoring and verification of Iraq's compliance with its disarmament obligations.¹²⁴ UNMOVIC did not have an auspicious beginning, as it was unable to establish operations in Iraq for almost three years. It was not until the Council adopted resolution 1441 (2002), in November 2002, that Iraq finally agreed to UNMOVIC's deployment on its territory. During the subsequent three months, UNMOVIC's role became quite prominent, as the international community scrutinised the extent to which Iraq was complying with its disarmament obligations, as required by resolution 1441 (2002) and previous resolutions.¹²⁵

activities [S/23801 (10 April 1992); S/24661 (19 October 1992); S/25620 (19 April 1993); S/26684 (5 November 1993); S/1994/489 (22 April 1994); S/1994/1138 (7 October 1994); S/1995/284 (10 April 1995); and S/1995/864 (11 October 1995)]; and eight half-yearly reports pursuant to resolution 1051 (1996) - which sought to consolidate UNSCOM's multiple reporting requirements - on its activities in general [S/1996/258 (11 April 1996); S/1996/848 (11 October 1996); S/1997/301 (11 April 1997); S/1997/774 (6 October 1997); S/1998/332 (16 April 1998); S/1998/920 (6 October 1998); S/1999/401 (9 April 1999); and S/1999/1037 (8 October 1999)].

¹²³ For further details relating to this panel, see below.

¹²⁴ S/RES/1284 (17 December 1999), operative paragraphs 1, 2.

¹²⁵ For UNMOVIC's quarterly reports, which have been submitted in accordance with paragraph 12 of resolution 1284 (1999), in the form of annexes to notes by the Secretary-General, see: S/2000/516 (1 June 2000), annex: *First quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2000/835 (28 August 2000), annex: *Second quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2000/1134 (1 December 2000), annex: *Third quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2001/177 (27 February 2001), annex: *Fourth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2001/515 (24 May 2001), annex: *Fifth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2001/833 (30 August 2001) annex: *Sixth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2001/1126 (29 November 2001), annex: *Seventh quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2002/195 (26 February 2002), annex: *Eighth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2002/606 (31 May 2002), annex: *Ninth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999)*; S/2002/981 (3 September 2002) annex: *Tenth quarterly report of the Executive-Chairman of*

3.4.3 The Oil-for-Food Programme (OFFP) and the Office of the Iraq Programme (OIP)

As noted above in section 5.3.3, the Oil-for-Food Programme was established in order to enable Iraq to sell limited quantities of oil in order to finance the purchase of humanitarian goods and the obligations of the Iraqi Government in relation to compensation arising from the Gulf War. The Office of the Iraq Programme (OIP) was established by the United Nations Secretariat in order to administer the Oil-for-Food Programme.¹²⁶ The Executive Director of the OIP has been responsible for the overall management and coordination of all United Nations humanitarian activities in Iraq, in which nine United Nations agencies and organizations have been involved.¹²⁷

3.4.4 The Iraq export/import monitoring mechanism

In October 1991 the Security Council requested the 661 Committee to develop, in cooperation with UNSCOM and the IAEA, a mechanism to monitor sales or supplies to Iraq of items that could be used for the production or acquisition of weapons, in contravention of the arms and related sanctions.¹²⁸ In July 1995 the 661 Committee approved a joint-proposal for that mechanism submitted by UNSCOM and the IAEA.¹²⁹ The proposal for the mechanism was then submitted to the Security Council for its

UNMOVIC under paragraph 12 of resolution 1284 (1999); S/2002/1303 (27 November 2002), annex: Eleventh quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999); S/2003/232 (28 February 2003), annex: Twelfth quarterly report of the Executive-Chairman of UNMOVIC under paragraph 12 of resolution 1284 (1999).

¹²⁶ For information relating to the OIP and the OFFP, see: <http://www.un.org/Depts/oip/index.html>.

¹²⁷ See: <http://www.un.org/Depts/oip/background/index.html>.

¹²⁸ S/RES/715 (11 October 1995), operative paragraph 7.

¹²⁹ S/1996/700 (26 August 1996), annex: *Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait*, annex, paragraph 32 (page 8).

consideration, and in March 1996 the Council decided to establish the mechanism.¹³⁰ The monitoring mechanism consisted of a Joint Export/Import Monitoring Unit established by UNSCOM and the IAEA. Under resolution 1051 (1996), by which the Council established the mechanism, all States were required to notify the mechanism if their nationals planned to export to Iraq any items or technologies that might have “dual-use” potential.¹³¹ Iraq was also required to inform the mechanism of any plans to receive potential “dual-use” items or technologies.¹³²

When the Security Council established UNMOVIC, it requested the Executive Chairman of UNMOVIC and the Director-General of the IAEA to establish a unit which would assume the monitoring mechanism’s responsibilities and to resume the revision and updating of the lists of items and technology to which the mechanism applied and thus the export to Iraq of which must be notified to the unit.¹³³ The updated list, which was circulated by the Executive-Chairman of UNMOVIC in June 2001,¹³⁴ came into effect on 13 July 2001.¹³⁵ In its quarterly reports to the Council, UNMOVIC generally summarized the unit’s activities during the reporting period. On the whole those activities consisted of reviewing notifications sent to it by States. The Unit also reviewed the distribution plans for the Oil-for-Food programme to ensure that they contained no “prohibited” items.¹³⁶ After the adoption

¹³⁰ S/RES/1051 (27 March 1996), operative paragraph 1.

¹³¹ S/RES/1051 (27 March 1996), operative paragraph 5.

¹³² S/RES/1051 (27 March 1996), operative paragraph 6.

¹³³ S/RES/1284 (17 December 1999), operative paragraph 8.

¹³⁴ S/2001/560 (15 October 2001): *Letter dated 1 June 2001 from the Executive Chairman of UNMOVIC addressed to the President of the Security Council*.

¹³⁵ S/2001/833 (30 August 2001), annex: *Sixth quarterly report of the Executive-Chairman of UNMOVIC*, paragraph 7.

¹³⁶ See, e.g., S/2002/195 (26 February 2002), annex: *Eighth quarterly report of the Executive-Chairman of UNMOVIC*, paragraph 13.

of the Goods Review List (GRL) by the Council in May 2002,¹³⁷ the unit's work increased substantially as it was involved in the process of reviewing applications to export humanitarian supplies to Iraq under the Oil-for-Food programme to ensure that the items or technologies proposed to be supplied to Iraq did not feature on the GRL.¹³⁸

3.4.5 The group of experts on the Iraq Sanctions Régime

In June 1998, the Council requested the Secretary-General to establish a group of experts to determine, in consultation with the Government of Iraq, whether Iraq was able to export the amount of petroleum and petroleum products permissible under the Oil-for-Food Programme.¹³⁹ The group was also to report on Iraqi production and transportation capacity.¹⁴⁰ The group submitted its report within two months,¹⁴¹ recommending that concluding that without rapid and adequate investment in spare parts and repair of production wells, plus the development of a number of smaller fields, oil production would continue to decline, and recommending that an investment of US\$1.2 billion was required to provide capacity to meet production goals.

¹³⁷ The GRL was adopted by the Council in resolution 1409 (2002): S/RES/1409 (14 May 2002), operative paragraphs 2-3.

¹³⁸ See, e.g., S/2002/606 (31 May 2002), annex: *Ninth quarterly report of the Executive-Chairman of UNMOVIC*, paragraphs 20-21; S/2002/981 (3 September 2002), annex: *Tenth quarterly report of the Executive-Chairman of UNMOVIC*, paragraph 28.

¹³⁹ S/RES/1153 (20 February 1998), operative paragraph 12.

¹⁴⁰ *Ibid.*

¹⁴¹ See: S/1998/330 (15 April 1998), annex: *Report of the group of experts established pursuant to resolution 1153 (1998)*.

3.4.6 Ad Hoc Panels on the Iraq Sanctions Régime

In January 1999, when Iraq was refusing to allow UNSCOM to resume its activities on Iraqi territory,¹⁴² the Security Council decided to establish three separate *ad hoc* panels.¹⁴³ The panels were established with the following objectives: a) Panel I would make recommendations on how to re-establish an effective disarmament monitoring and verification régime in Iraq; b) Panel II would address the humanitarian needs of the Iraqi people; and c) Panel III would consider outstanding issues relating to prisoners of war and Kuwaiti property.¹⁴⁴ The work of the first two panels was directly related to the administration, implementation and enforcement of sanctions. The panels submitted their reports within two months.¹⁴⁵ The recommendations of the first two panels were clearly taken into account by the Council,¹⁴⁶ as demonstrated by the actions it subsequently took to replace UNSCOM with UNMOVIC and to reinvigorate the OFFP.¹⁴⁷

¹⁴² The UNSCOM inspectors had been withdrawn from Iraq on 16 December 1998, due to security concerns arising from the impending bombardment of Baghdad by US and British warplanes.

¹⁴³ See: S/1999/100: *Note by the President of the Security Council* (30 January 1999).

¹⁴⁴ *Ibid.*

¹⁴⁵ For the reports of the panels, see: S/1999/356 (30 March 1999): Letters dated 27 and 30 March 1999, respectively, from the Chairman of the Panels established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) addressed to the President of the Security Council, Annex I [containing the *Report of the First Panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) concerning disarmament and current and future ongoing monitoring and verification issues*], Annex II [containing the *Report of the Second Panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) concerning the current humanitarian situation in Iraq*], Annex III [containing the *Report of the Third Panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) on prisoners of war and Kuwaiti property*].

¹⁴⁶ For the major recommendations of the First Panel, see *Report of the First Panel, ibid.*, paragraphs 61-68. For the major recommendations of the Second Panel, see *Report of the Second Panel, ibid.*, paragraphs 43-57.

¹⁴⁷ See, in particular, S/RES/1284 (17 December 1999).

3.4.7 The role of the Secretary-General

During the course of the Iraq sanctions régime, the Security Council requested, invited or directed the Secretary-General to undertake a vast collection of responsibilities connected to the administration, monitoring and implementation of the Iraq sanctions régime. The range of the Secretary-General's tasks was so broad due to the number of subsidiary bodies and programmes established in connection with the sanctions régime, including UNSCOM, the UNCC, UNMOVIC and the Oil-for-Food Programme. The tasks bestowed upon the Secretary-General included: reporting on the implementation of initiatives related to the sanctions régime; planning for the establishment of new subsidiary bodies and programmes; establishing those subsidiary bodies and programmes; submitting recommendations for improved implementation and monitoring; taking action to improve implementation and monitoring; providing administrative assistance and support to the Council's subsidiary bodies.

i. Reporting

Among the Secretary-General's reporting responsibilities in connection with the Iraq sanctions régime, he was requested, invited or directed to undertake the following tasks: reporting on the implementation of the sanctions;¹⁴⁸ reporting on the humanitarian situation in Iraq;¹⁴⁹ reporting on the implementation of the Oil-for-Food Programme 90 and 180 days after the initiation of each phase of the Programme;¹⁵⁰ submitting, in cooperation with the

¹⁴⁸ S/RES/661 (6 August 1990), operative paragraph 10 (requesting the Secretary-General to report to it within thirty days on the implementation of resolution 661 (1990)).

¹⁴⁹ S/RES/666 (13 September 1990), operative paragraphs 3-5 (requesting the Secretary-General to seek information on the availability of food in Iraq and Kuwait and to report such information to the 661 Committee).

¹⁵⁰ S/RES/986 (14 April 1995), operative paragraph 11; S/RES/1111 (4 June 1997), operative paragraph 3; S/RES/1143 (4 December 1997), operative paragraph 4; S/RES/1153 (20 February

Director-General of the IAEA, six-monthly progress reports on the monitoring of the sanctions against arms and weapons of mass destruction;¹⁵¹ reporting on the implementation of the distribution plan for the OFFP;¹⁵² reporting on improving the electricity sector in Iraq and on essential humanitarian needs in Iraq;¹⁵³ reporting if Iraq were unable to export the full allotment of petroleum and petroleum products permissible under the OFFP;¹⁵⁴ reporting on the progress made in meeting the humanitarian needs of the Iraqi people and on the revenues necessary to meet those needs;¹⁵⁵ reporting on the implementation of resolution 1284 (1999), by which the Council established UNMOVIC and modified the OFFP;¹⁵⁶ reporting with proposals for the use of additional export routes for petroleum and petroleum products for the OFFP;¹⁵⁷ reporting on the extent to which the Iraqi Government was ensuring equitable distribution of humanitarian supplies provided under the OFFP;¹⁵⁸ reporting on the implementation of the Goods Review List, including recommendations for the List and the procedures for its implementation;¹⁵⁹ updating the 661 Committee on steps taken to implement the temporary measures authorized after the outbreak of the second Gulf War to

1998), operative paragraph 10; S/RES/1210 (4 November 1998), operative paragraph 6; S/RES/1242 (21 May 1999), operative paragraph 6; S/RES/1281 (10 December 1999), operative paragraph 5; S/RES/1302 (8 June 2000), operative paragraph 5; S/RES/1330 (5 December 2000), operative paragraph 5; S/RES/1360 (3 July 2001), operative paragraph 5 (requesting on that occasion that the Secretary-General report within 90 and 150 days on the implementation of the OFFP); S/RES/1409 (14 May 2002), operative paragraph 7 (requesting on that occasion that the Secretary-General report on the implementation of the OFFP within 180 days).

¹⁵¹ S/RES/1051 (27 March 1996), operative paragraph 16.

¹⁵² S/RES/1153 (20 February 1998), operative paragraph 5; S/RES/1210 (4 November 1998), operative paragraph 7; S/RES/1242 (21 May 1999), operative paragraph 7.

¹⁵³ S/RES/1153 (20 February 1998), operative paragraph 11.

¹⁵⁴ S/RES/1281 (10 December 1999), operative paragraph 6.

¹⁵⁵ S/RES/1284 (17 December 1999), operative paragraph 28.

¹⁵⁶ S/RES/1284 (17 December 1999), operative paragraph 32.

¹⁵⁷ S/RES/1330 (5 December 2000), operative paragraph 18.

¹⁵⁸ S/RES/1360 (3 July 2001), operative paragraph 11; S/RES/1447 (4 December 2002), operative paragraph 4.

use contracts previously approved under the OFFP to provide for the humanitarian needs of the Iraqi people;¹⁶⁰ and reporting to the Council on the implementation of those temporary measures.¹⁶¹

ii. Planning

Among the Secretary-General's planning responsibilities in connection with the Iraq sanctions régime, he was requested, invited or directed to undertake the following tasks: developing a plan for the formation of UNSCOM;¹⁶² developing, in cooperation with UNSCOM, a plan for the ongoing monitoring and verification of Iraq's compliance with its obligation not to use, develop, construct or acquire weapons of mass destruction;¹⁶³ developing recommendations for the establishment of the Iraq Compensation Fund;¹⁶⁴ developing guidelines for the full implementation of the sanctions against arms and weapons of mass destruction and their development or servicing;¹⁶⁵ submitting a plan for implementing the Council's first attempt at an Oil-for-Food Programme;¹⁶⁶ and undertaking planning for the phasing out of the Oil-for-Food Programme.¹⁶⁷

iii. Establishing new subsidiary bodies or programmes

¹⁵⁹ S/RES/1409 (14 May 2002), operative paragraph 8; S/RES/1447 (4 December 2002), operative paragraph 5.

¹⁶⁰ S/RES/1472 (28 March 2003), operative paragraph 9.

¹⁶¹ S/RES/1472 (28 March 2003), operative paragraph 11.

¹⁶² S/RES/687 (3 April 1991), operative paragraph 9 (deciding that the Secretary-General would develop a plan for the formation of UNSCOM).

¹⁶³ S/RES/687 (3 April 1991), operative paragraph 10.

¹⁶⁴ S/RES/687 (3 April 1991), operative paragraph 19 (directing the Secretary-General to develop recommendations for the establishment of a compensation fund to cover Iraq's liabilities for loss, damage or injury to foreign Governments, nationals and corporations as a result of its invasion and occupation of Kuwait).

¹⁶⁵ S/RES/687 (3 April 1991), operative paragraph 26.

¹⁶⁶ S/RES/706 (15 August 1991), operative paragraph 5.

¹⁶⁷ S/RES/1483 (22 May 2003), operative paragraph 16.

Among the Secretary-General's responsibilities for establishing new subsidiary bodies or programmes in connection with the Iraq sanctions régime, he was requested, invited or directed to undertake the following tasks: establishing the United Nations Compensation Commission (UNCC);¹⁶⁸ reporting every six months on the work of UNSCOM;¹⁶⁹ establishing an escrow account for the purposes of the Oil-for-Food Programme;¹⁷⁰ establishing a group of experts to determine whether Iraq was able to export the permitted amount of oil under the OFFP;¹⁷¹ appointing an Executive-Chairman of UNMOVIC, as well as a "College of Commissioners";¹⁷² establishing a group of experts, including oil industry experts, to report on Iraq's petroleum production and export capacity and to make recommendations for increasing that capacity;¹⁷³ appointing overseers to approve petroleum and petroleum product exports under the OFFP;¹⁷⁴ appointing independent experts to prepare a comprehensive report on the humanitarian situation in Iraq.¹⁷⁵

iv. *Submitting recommendations for improving implementation and monitoring*

Among the Secretary-General's responsibilities for submitting recommendations to improve implementation and monitoring in connection with the Iraq sanctions régime, he was requested, invited or directed to undertake the following tasks: submitting recommendations

¹⁶⁸ S/RES/692 (20 May 1991), operative paragraph 4.

¹⁶⁹ S/RES/699, operative paragraph 3.

¹⁷⁰ S/RES/986 (14 April 1995), operative paragraphs 7-8.

¹⁷¹ S/RES/1153 (20 February 1998), operative paragraph 12.

¹⁷² S/RES/1284 (17 December 1999), operative paragraph 5.

¹⁷³ S/RES/1284 (17 December 1999), operative paragraph 30.

¹⁷⁴ S/RES/1302 (8 June 2000), operative paragraph 7.

¹⁷⁵ S/RES/1302 (8 June 2000), operative paragraph 18.

for ensuring that Iraq met its obligation to cover the costs of UNSCOM's operations,¹⁷⁶ compiling a detailed list of the parts and equipment necessary to enable the full level of production of petroleum and petroleum products permissible under the terms of the OFFP;¹⁷⁷ making recommendations for the expenditure of sums expected to be available;¹⁷⁸ submitting recommendations to the 661 Committee for minimizing the delay in paying the full amount of each purchase of Iraqi petroleum and petroleum products under the OFFP;¹⁷⁹ submitting to the 661 Committee recommendations for utilizing excess funds in an account for the inspection and auditing of the OFFP for the humanitarian components of the Programme.¹⁸⁰

v. *Taking action to improve implementation and monitoring*

Among the Secretary-General's responsibilities for taking action to improve implementation and monitoring in connection with the Iraq sanctions régime, he was requested, invited, authorized or directed to undertake the following tasks: using his good offices to facilitate the delivery of humanitarian supplies to Iraq and Kuwait;¹⁸¹ implementing the first attempt at an Oil-for-Food Programme;¹⁸² taking the necessary actions to ensure the implementation of the OFFP;¹⁸³ monitoring parts and equipment imported to Iraq for the

¹⁷⁶ S/RES/699, operative paragraph 4.

¹⁷⁷ S/RES/1210 (4 November 1998), operative paragraph 9; S/RES/1242 (21 May 1999), operative paragraph 9; S/RES/1281 (10 December 1999), operative paragraph 9.

¹⁷⁸ S/RES/1281 (10 December 1999), operative paragraph 6.

¹⁷⁹ S/RES/1302 (8 June 2000), operative paragraph 13.

¹⁸⁰ S/RES/1302 (8 June 2000), operative paragraph 14.

¹⁸¹ S/RES/666 (13 September 1990), operative paragraph 7 (requesting the Secretary-General to use his good offices to facilitate the delivery and distribution of foodstuffs to Iraq and Kuwait).

¹⁸² S/RES/712 (19 September 1991), operative paragraph 10.

¹⁸³ S/RES/986 (14 April 1995), operative paragraph 13 (requesting the Secretary-General to take the necessary actions to ensure the implementation of the OFFP, authorizing him to enter into the necessary arrangements or agreements, and requesting him to report on steps taken in that respect); S/RES/1153 (20 February 1998), operative paragraph 4; S/RES/1210 (4 November

purposes of increasing the oil production necessary for the OFFP;¹⁸⁴ maximizing the effectiveness of the OFFP;¹⁸⁵ minimizing the cost of U.N. activities associated with the implementation of the OFFP;¹⁸⁶ making the necessary arrangements to allow the purchase of Iraqi-produced goods under the OFFP;¹⁸⁷ making the necessary arrangements to provide for reasonable expenses related to the Hajj to be met by funds in the escrow account;¹⁸⁸ redirecting excess funds in an account for the inspection and auditing of the OFFP so that they could be used for humanitarian purchases;¹⁸⁹ expanding the lists of humanitarian items for which simple notification to the 661 Committee, rather than the Committee's approval, was required prior to being exported to Iraq under the OFFP;¹⁹⁰ redirecting a percentage of the funds from the account for the Compensation Fund to the account for humanitarian projects and requesting the Secretary-General to report on the use of those funds;¹⁹¹ developing consumption rates and levels for medicines and medicinal chemicals which could be exported to Iraq under the Goods Review List procedures;¹⁹² undertaking, after the outbreak of the second Gulf War, temporary measures to provide for the implementation of

1998), operative paragraph 4; S/RES/1242 (21 May 1999), operative paragraph 3; S/RES/1281 (10 December 1999), operative paragraph 3; S/RES/1330 (5 December 2000), operative paragraph 3; S/RES/1360 (3 July 2001), operative paragraph 3.

¹⁸⁴ S/RES/1175 (19 June 1998), operative paragraph 6.

¹⁸⁵ S/RES/1284 (17 December 1999), operative paragraph 21.

¹⁸⁶ S/RES/1284 (17 December 1999), operative paragraph 22.

¹⁸⁷ S/RES/1284 (17 December 1999), operative paragraph 24; S/RES/1330 (5 December 2000), operative paragraph 15.

¹⁸⁸ S/RES/1284 (17 December 1999), operative paragraph 26.

¹⁸⁹ S/RES/1330 (5 December 2000), operative paragraph 9; S/RES/1360 (3 July 2001), operative paragraph 8.

¹⁹⁰ S/RES/1330 (5 December 2000), operative paragraph 11.

¹⁹¹ S/RES/1360 (3 July 2001), operative paragraph 9.

¹⁹² S/RES/1454 (30 December 2002), operative paragraph 3 (directing the Secretary-General to develop within 60 days consumption rates and levels for medicines and medicinal chemicals under paragraph 20 of the procedures for the implementation of the Goods Review List).

contracts that had been approved under the OFFP prior to the outbreak of that war,¹⁹³ and terminating the OFFP over a period of six months.¹⁹⁴

vi. Providing administrative assistance and support

Among the Secretary-General's responsibilities for providing administrative assistance and support to the Council's subsidiary bodies in connection with the Iraq sanctions régime, he was requested, invited or directed to undertake the following tasks: providing all necessary assistance to the 661 Committee;¹⁹⁵ providing Iraq and the 661 Committee with a daily statement of the status of the escrow account established under the OFFP.¹⁹⁶

5.4.8 States

States were called upon to undertake a number of additional actions to strengthen the implementation, enforcement and monitoring of the sanctions against Iraq. When the sanctions were imposed, the Council called upon all States, including States non-members of the United Nations, to act strictly in accordance with the sanctions, notwithstanding any

¹⁹³ S/RES/1472 (28 March 2003), operative paragraph 4. Those measures included: (a) establishing alternative locations for the delivery of humanitarian supplies; (b) reviewing approved contracts to determine priority humanitarian contracts to be fulfilled in the authorized period; (c) contacting suppliers to determine action to be taken in accordance with those priorities; (d) negotiating necessary adjustments to contracts; (e) negotiating new contracts for essential medical items; (f) transferring, on an exceptional and reimbursable basis as necessary to ensure the delivery of essential humanitarian supplies to the Iraqi people, unencumbered funds between the accounts created under the OFFP for humanitarian assistance to Iraq in general, and for complementary humanitarian assistance to three northern Iraqi governorates; (g) using funds in those accounts, as necessary and appropriate, to compensate suppliers and shippers for extra costs incurred as a result of diverting and delaying shipments; (h) meeting additional operational and administrative costs by using the fund created under the OFFP for the payment of independent inspection activities; and (i) using where possible locally produced goods and services.

¹⁹⁴ S/RES/1483 (22 May 2003), operative paragraph 16.

¹⁹⁵ S/RES/661 (6 August 1990), operative paragraph 8.

¹⁹⁶ S/RES/1284 (17 December 1999), operative paragraph 23.

contract entered into or licence granted before the date the sanctions entered into force,¹⁹⁷ and it called upon States to cooperate fully with the 661 Committee in the fulfilment of its tasks, including by supplying such information as the Committee might seek.¹⁹⁸ Two weeks after the sanctions were imposed, the Council called upon Member States cooperating with the Government of Kuwait and which were deploying maritime forces to the area to use such measures commensurate with the specific circumstances as may be necessary, under the Council's authority, to halt all inward and outward maritime shipping, in order to inspect and verify that it was not violating the sanctions.¹⁹⁹ At the same time, the Council also invited Member States to use political and diplomatic measures to ensure compliance with the sanctions,²⁰⁰ requested all States to provide, in accordance with the Charter of the United Nations, such assistance as might be required by the States cooperating with the Government of Kuwait,²⁰¹ and requested States acting pursuant to the authority to halt inward and outward maritime shipping to submit reports to the Council and the 661 Committee concerning the situation between Iraq and Kuwait.²⁰²

In September 1990, when the Council applied aircraft sanctions against Iraq, it called upon States: to carry out their obligations to ensure strict and complete compliance with the sanctions;²⁰³ to cooperate in taking such measures as necessary, consistent with

¹⁹⁷ S/RES/661 (6 August 1990), operative paragraph 5; S/RES/670 (25 September 1990), operative paragraph 3.

¹⁹⁸ S/RES/661 (6 August 1990), operative paragraph 7. The Council reaffirmed this call in subsequent resolutions connected with the sanctions régime. See: S/RES/670 (25 September 1990), operative paragraph 10.

¹⁹⁹ S/RES/665 (25 August 1990), operative paragraph 1.

²⁰⁰ S/RES/665 (25 August 1990), operative paragraph 2.

²⁰¹ S/RES/665 (25 August 1990), operative paragraph 3.

²⁰² S/RES/665 (25 August 1990), operative paragraph 4.

²⁰³ S/RES/670 (25 September 1990), operative paragraph 1.

international law, to ensure the effective implementation of the sanctions;²⁰⁴ and to detain or deny entry to Iraqi ships which were being or had been used in violation of the sanctions.²⁰⁵ As a result of that authorisation, a multinational interception force was stationed off the coast of Iraq for more than a decade.²⁰⁶ The force routinely intercepted vessels going to and from Iraq, in order to inspect cargo and verify that the vessels were not violating the Iraq sanctions régime.

In November 1990 the Council, acting under Chapter VII of the Charter,²⁰⁷ demanded that Iraq comply fully with resolution 660 (1990) and decided to allow it one final opportunity to do so.²⁰⁸ The Council then authorized Member States cooperating with the Government of Kuwait, unless Iraq were to comply fully with its obligations under Security Council resolutions, to use all necessary means to uphold and implement resolution 660 (1990) and subsequent relevant resolutions and to restore international peace and security,²⁰⁹ and it requested all States to provide appropriate support for such actions.²¹⁰ The Council also requested the States concerned to keep it regularly informed of actions so undertaken.²¹¹ Whilst this action did not strictly constitute action to implement the sanctions, it had the objective of enforcing Iraqi compliance with the objectives for which the sanctions had been imposed.

²⁰⁴ S/RES/670 (25 September 1990), operative paragraph 7.

²⁰⁵ S/RES/670 (25 September 1990), operative paragraph 8.

²⁰⁶ The force's operations were focussed in the Red Sea from 1991-1994, after which they shifted to the Persian Gulf: see *Report of the 661 Committee for 1990-1996*, above note 103, paragraphs 80-85.

²⁰⁷ S/RES/678 (November 29 1990), preambular paragraph 5.

²⁰⁸ S/RES/678 (November 29 1990), operative paragraph 1.

²⁰⁹ S/RES/678 (November 29 1990), operative paragraph 2.

²¹⁰ S/RES/678 (November 29 1990), operative paragraph 3.

²¹¹ S/RES/678 (November 29 1990), operative paragraph 4.

In April 1991, when the Council adopted resolution 687 (1991), thus reaffirming the continuing application of sanctions, it called upon all States to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations,²¹² and requested all States to maintain such national controls and procedures and to take such other actions consistent with the guidelines to be established by it for the full implementation of the arms sanctions against Iraq.²¹³ At the same time, the Council also required all States to take the necessary measures to ensure that no claim lay at the instance of the Government of Iraq, or of Iraqi nationals and entities, in connection with any contract or other transaction where its performance had been affected by the sanctions.²¹⁴ In June 1991, when the Council approved those guidelines, it requested all States to report to the Secretary-General on the measures they had instituted for meeting the obligations to implement the arms sanctions.²¹⁵

In March 1996, when the Council approved arrangements for the establishment of the export/import monitoring mechanism for Iraq,²¹⁶ it required all States to notify the mechanism of the planned sale or supply to Iraq from their territories of any items or technologies that might have dual-use potential.²¹⁷ Iraq was also required to inform the

²¹² S/RES/687 (3 April 1991), operative paragraph 25.

²¹³ S/RES/687 (3 April 1991), operative paragraph 27. the Council reiterated that call in resolution 700 (1991): S/RES/700 (17 June 1991), operative paragraph 3.

²¹⁴ S/RES/687 (3 April 1991), operative paragraph 29.

²¹⁵ S/RES/700 (17 June 1991), operative paragraph 4.

²¹⁶ For discussion of the mechanism, see section 3.4, above.

²¹⁷ S/RES/1051 (27 March 1996), operative paragraph 5. The items and technologies that might have dual-use potential were elaborated in the provisions for the establishment of the mechanism, which were elaborated by the 661 Committee. See: S/1995/1017 (7 December 1995), annex I: *Provisions for the mechanism for export/import monitoring under paragraph 7 of resolution 715 (1991): Report prepared by the 661 Committee, UNSCOM and the IAEA*, paragraphs 9, 11, 13, 24, 25, 27 and 28.

mechanism of any plans to receive potential “dual-use” items or technologies.²¹⁸ At the same time, the Council also: called upon all States to cooperate fully with the 661 Committee, UNSCOM and the Director-General of the IAEA in the fulfilment of their tasks in connection with the monitoring mechanism, including by supplying such information as the Committee sought;²¹⁹ and called upon all States to adopt as soon as possible such measures as necessary under their national procedures to implement the mechanism.²²⁰

In November 2002, when the Security Council decided that Iraq was in material breach of its obligations under Security Council resolutions,²²¹ it also requested all Member States to give full support to UNMOVIC and the IAEA in the discharge of their mandates, including by providing any information related to prohibited programmes or other aspects of their mandates, including on Iraqi attempts since 1998 to acquire prohibited items, and by recommending sites to be inspected, persons to be interviewed, conditions of such interviews, and data to be collected, the results of which were to be reported to the Council by UNMOVIC and the IAEA.²²²

As part of the implementation of the Oil-for-Food Programme, the Council authorized States, subject to certain conditions, to permit the import of petroleum and petroleum products.²²³ That initial authorisation was extended on multiple occasions.²²⁴ In

²¹⁸ S/RES/1051 (27 March 1996), operative paragraph 6.

²¹⁹ S/RES/1051 (27 March 1996), operative paragraph 12.

²²⁰ S/RES/1051 (27 March 1996), operative paragraph 13.

²²¹ S/RES/1441 (8 November 2002), operative paragraph 1.

²²² S/RES/1441 (8 November 2002), operative paragraph 10.

²²³ The Council first foreshadowed such an authorisation in August 1991. See: S/RES/706 (15 August 1991), operative paragraph 1. After a number of years in which Iraq refused to comply with the scheme, the Council again attempted to implement an Oil-for-Food Programme in 1995, this time with more success: S/RES/986 (14 April 1995), operative paragraph 1.

²²⁴ See, e.g., S/RES/1111 (4 June 1997), operative paragraph 1; S/RES/1143 (4 December 1997), operative paragraph 1; S/RES/1153 (20 February 1998), operative paragraph 1; S/RES/1158 (25

addition to extending that authorisation, the Council also: called upon States to cooperate fully in the implementation of the Oil-for-Food Programme;²²⁵ authorized Turkey to permit the import of petroleum and petroleum products from Iraq sufficient to meet the pipeline tariff charges for the transport of Iraqi petroleum and petroleum products through the Kirkuk-Yumurtalik pipeline;²²⁶ authorized States to permit the export to Iraq, subject to the approval of the 661 Committee, of parts and equipment for the safe operation of the Kirkuk-Yumurtalik pipeline system;²²⁷ authorized States to permit activities necessary for the exports authorized under the Oil-for-Food Programme, including financial transactions related thereto;²²⁸ appealed to all States to cooperate in the timely provision to Iraq of humanitarian supplies permitted under the OFFP;²²⁹ authorized States to permit the export

March 1998), operative paragraph 1; S/RES/1210 (24 November 1998), operative paragraph 1; S/RES/1242 (21 May 1999), operative paragraph 1; S/RES/1281 (10 December 1999), operative paragraph 1; S/RES/1284 (17 December 1999), operative paragraph 15; S/RES/1302 (8 June 2000), operative paragraph 1; S/RES/1330 (5 December 2000), operative paragraph 1; S/RES/1352 (1 June 2001), operative paragraph 1; S/RES/1360 (3 July 2001), operative paragraph 1; S/RES/1382 (29 November 2001), operative paragraph 1; S/RES/1409 (14 May 2002), operative paragraph 1; S/RES/1443 (25 November 2002), operative paragraph 1; S/RES/1447 (4 December 2002), operative paragraph 1; S/RES/1454 (30 December 2002), operative paragraph 1; S/RES/1472 (28 March 2003)

²²⁵ In connection with the first attempt at an Oil-for-Food Programme, see: S/RES/712 (19 September 1991), operative paragraph 11. In connection with the actual Oil-for-Food Programme, see: S/RES/1153 (20 February 1998), operative paragraph 6 (urging all States and, in particular, Iraq, to provide full cooperation in the effective implementation of the OFFP); S/RES/1210 (24 November 1998), operative paragraph 11 (urging all States and, in particular, Iraq, to provide full cooperation in the effective implementation of the OFFP); S/RES/1242 (21 May 1999), operative paragraph 11 (urging all States and, in particular, Iraq, to provide full cooperation in the effective implementation of the OFFP); S/RES/1281 (10 December 1999), operative paragraph 11 (urging all States and, in particular, Iraq, to provide full cooperation in the effective implementation of the OFFP); S/RES/1302 (8 June 2000), operative paragraph 15 (urging all States and, in particular, Iraq, to provide full cooperation in the effective implementation of the OFFP); S/RES/1330 (5 December 2000), operative paragraph 16 (urging all States and, in particular, Iraq, to provide full cooperation in the effective implementation of the OFFP); S/RES/1360 (3 July 2001), operative paragraph 10 (urging all States and, in particular, Iraq, to provide full cooperation in the effective implementation of the OFFP).

²²⁶ S/RES/986 (14 April 1995), operative paragraph 2.

²²⁷ S/RES/986 (14 April 1995), operative paragraph 9(a).

²²⁸ S/RES/986 (14 April 1995), operative paragraph 9(b).

²²⁹ S/RES/1153 (20 February 1998), operative paragraph 7; S/RES/1210 (24 November 1998), operative paragraph 12; S/RES/1242 (21 May 1999), operative paragraph 12; S/RES/1281 (10

to Iraq of the necessary parts and equipment to enable Iraq to increase the export of petroleum and petroleum products to the amount permitted under the OFFP;²³⁰ encouraged Member States to provide Iraq with supplementary humanitarian and published material of an educational character;²³¹ urged all States submitting applications to provide supplies to Iraq under the OFFP to take steps to minimize delays;²³² and authorized States to permit the sale or supply to Iraq of any commodities and products other than military commodities and products and military-related commodities and products covered by the Goods Review List.²³³

5.4.9 International organizations

In September 1990, the Council affirmed that the United Nations, the specialized agencies and other international organizations in the United Nations system were required to take such measures as might be necessary to give effect to the sanctions.²³⁴ In April 1991, the Council called upon international organizations to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations,²³⁵ and to take all appropriate steps to assist in ensuring full compliance with the sanctions.²³⁶

December 1999), operative paragraph 12; S/RES/1302 (8 June 2000), operative paragraph 16; S/RES/1330 (5 December 2000), operative paragraph 21; S/RES/1360 (3 July 2001), operative paragraph 13; S/RES/1382 (29 November 2001), operative paragraph 5.

²³⁰ S/RES/1175 (19 June 1998), operative paragraph 1.

²³¹ S/RES/1284 (17 December 1999), operative paragraph 19.

²³² S/RES/1330 (5 December 2000), operative paragraph 14.

²³³ S/RES/1409 (14 May 2002), operative paragraph 3. The Goods Review List was adopted by operative paragraph 3 of the same resolution, and was circulated as document S/2002/515 (3 May 2002), annex: *Goods Review List*.

²³⁴ S/RES/670 (25 September 1990), operative paragraph 11.

²³⁵ S/RES/687 (3 April 1991), operative paragraph 25.

²³⁶ S/RES/687 (3 April 1991), operative paragraph 27. the Council reiterated that call in resolution 700 (1991): S/RES/700 (17 June 1991), operative paragraph 3.

3.5 Notable aspects of the Iraq sanctions régime

The Iraq sanctions régime is notable for many reasons. First, it was perhaps the most far-reaching and long-lasting comprehensive U.N. sanctions regime.²³⁷ Second, it has spawned a complex web of subsidiary actors, working in concert with a range of other international actors, in order to ensure both that the sanctions are effectively implemented and that their humanitarian consequences upon the Iraqi civilian population are minimised. Third, the Iraq sanctions régime was maintained, and its objectives modified, beyond the point when its original objectives were achieved.

Many aspects of the régime invite closer inspection, such as the extent to which it was used as a justification for the application of subsequent military sanctions, the manner in which the sanctions were modified in order to impose a post-conflict settlement upon a vanquished Iraq, and the manner in which the effective implementation of a comprehensive sanctions régime requires the employment of considerable resources and the participation of a broad range of actors. The Sanctions against Iraq have also been notable for the fact that they have caused significant hardship for the Iraqi civilian population, without in themselves appearing to have caused any significant change in the personnel, posturing or ambitions of the Iraqi leadership.

²³⁷ In terms of duration, the Iraq sanctions régime outlasted the most comprehensive of the Southern Rhodesia sanctions by less than a year. It is arguable, however, that the implementation of the Iraq sanctions régime was more effective than the Southern Rhodesian sanctions, due to the fact that a few key States were not entirely scrupulous in their implementation of the sanctions against Southern Rhodesia.

4. *The former Yugoslavia sanctions régime*¹

The Council first imposed sanctions against Yugoslavia in September 1991, in an effort to address the conflict that soon led to the dissolution of that State. The sanctions régime consisted of an arms embargo. It was maintained after Yugoslavia dissolved, becoming an embargo against the provision of weapons and military equipment to all the successor States of the former Yugoslavia. The embargo was eventually terminated in June

¹ Although this sanctions régime was initially applied against Yugoslavia, upon the dissolution of that State it was maintained against all Yugoslavia's successor States. It is therefore referred to here as the former Yugoslavia sanctions régime. The conflict in the former Yugoslavia has so far led the Security Council to initiate four distinct Article 41 sanctions regimes, against: i) all States of the former Yugoslavia [this sanctions régime is addressed in this section]; ii) the Federal Republic of Yugoslavia (Serbia and Montenegro) to address the situation in Bosnia-Herzegovina [for details on that sanctions régime, see Appendix 7, below]; iii) the Bosnian Serbs [for details relating to that sanctions régime, see Appendix 9, below]; and iv) against the Federal Republic of Yugoslavia (Serbia and Montenegro) to address the situation in Kosovo [for details relating to that sanctions régime, see Appendix 15, below].

In addition to the above four sanctions régimes, the Council also took other forms of non-military action to address the conflict in the former Yugoslavia, including: a) establishing an International Tribunal for the Prosecution of Persons Responsible for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ("the International Tribunal for the Former Yugoslavia"); and b) imposing a general ban upon flights in the airspace of Bosnia-Herzegovina. These actions are not included in analysis here because they were not employed, implemented or enforced in such a way that they might be characterised as sanctions régimes. It would be possible, however, to construct an argument that the implicit basis for the application of those measures was Article 41 of the Charter, as they amount to Council-mandated non-military action to address a threat to international peace and security. For the resolutions establishing the International Tribunal for the Former Yugoslavia, see: S/RES/808 (22 February 1993) [deciding that a tribunal will be established and requesting the Secretary-General to submit specific proposals on the creation of such a tribunal]; S/RES/827 (25 May 1993) [approving the subsequent report of the Secretary-General and deciding to establish the tribunal in accordance with the Secretary-General's proposals]. For the resolutions relating to the ban upon flights in Bosnia and Herzegovinan airspace, see: S/RES/781 (9 October 1992) [imposing an initial ban on all military flights in the airspace of Bosnia-Herzegovina]; S/RES/786 (10 November 1992) [clarifying that the ban applies to rotary as well as fixed-wing military flights]; S/RES/816 (31 March 1993) [expanding the ban to include all flights in the airspace of Bosnia-Herzegovina]. Although the Council neither determined the existence of a breach of or threat to peace and security, nor referred to Chapter VII, when it established the flight ban in resolution 781 (1992), it subsequently determined in resolution 816 (1993) that the situation in Bosnia and Herzegovina continued to constitute a threat to international peace and security and noted that it was acting under chapter VII [see S/RES/816 (31 March 1993), preambular paragraphs 7, 8].

1996, after the signing of the Dayton Peace Agreement and the entry into force of a regional arms control agreement.

4.1 The constitutional basis for imposing sanctions against the former Yugoslavia

In September 1991 the Security Council adopted resolution 713 (1991), in which it expressed concern that the continuation of the situation in Yugoslavia constituted a threat to international peace and security,² noted its primary responsibility under the U.N. Charter for the maintenance of international peace and security,³ and invoked Chapter VII of the Charter before imposing an embargo upon the delivery of weapons and military equipment to Yugoslavia.⁴ In subsequent resolutions relating to the application of the arms embargo, the

² S/RES/713 (25 September 1991), preambular paragraph 4. In preambular paragraph 3, the Council had stated that it was deeply concerned by the fighting in Yugoslavia, which was “causing a heavy loss of human life and material damage,” and by “the consequences for the countries of the region”. The threat to international peace and security can therefore be interpreted to be the fighting in Yugoslavia and its consequences for the countries of the region.

³ S/RES/713 (25 September 1991), preambular paragraph 5.

⁴ The invocation of Chapter VII appeared in the same operative paragraph by which the Council imposed the embargo: see S/RES/713 (25 September 1991), operative paragraph 6. When the embargo was first imposed, the international community had not yet acknowledged the break-up of the Socialist Federal Republic of Yugoslavia (SFRY). In resolution 713 (1991), the Council therefore applied the arms embargo against the Socialist Federal Republic of Yugoslavia in general. It was not until resolution 752 (1992) that Council resolutions began to refer to “the former Socialist Federal Republic of Yugoslavia”: see, e.g.: S/RES/752 (15 May 1992), preambular paragraph 3, operative paragraph 6; S/RES/757 (30 May 1992), preambular paragraphs 2, 10, 17. Upon the break-up of Yugoslavia the embargo remained in place, subsequently applying to all the States of the former Yugoslavia: see S/RES/727 (8 January 1992), operative paragraph 6 [reaffirming that the embargo applied to all the States of the former Yugoslavia, in accordance with the interpretation provided by the Secretary-General in his further report pursuant to Security Council resolution 721 (1991). For the relevant part of that report, see: S/23363 and Add. 1 (5 and 7 January 1992), paragraph 33].

The Council’s decision to apply sanctions against the SFRY might be interpreted as a movement away from the traditional approach to the operation of Chapter VII, likely held by the framers of the Charter, which viewed conventional State versus State conflict as the type of breach of or threat to peace and security that would require the application of Article 41 or Article 42 measures. Although the Council identified the potential threat posed to other States in the region by the conflict in the SFRY, the application of sanctions against the SFRY implicitly acknowledged that conflicts traditionally viewed as “internal” and therefore beyond the scope of Chapter VII intervention could in fact pose a threat to international peace and security.

Council reaffirmed that the situation in the former Yugoslavia continued to constitute a threat to international peace and security,⁵ and again invoked Chapter VII.⁶

4.2 The objective of the former Yugoslavia sanctions régime

The objective of the former Yugoslavia sanctions régime was the establishment of peace and stability in Yugoslavia.⁷ Initially the Council did not set particular conditions for the suspension or termination of the sanctions, stating that the embargo would remain in place until it “decide[d] otherwise following consultation between the Secretary-General and the Government of Yugoslavia”.⁸ Three years later, however, the Council established the concrete requirement for the termination of the arms embargo of the signing of a proposed Peace Agreement, including the conclusion of a regional arms control agreement, by the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia (Serbia and Montenegro).⁹

4.3 The scope of the former Yugoslavia sanctions régime

Under the sanctions régime, the Security Council required all States to implement immediately a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia.¹⁰ It was maintained after Yugoslavia dissolved, becoming an embargo against the provision of weapons and military equipment to all the successor States

⁵ See, e.g., S/RES/721 (27 November 1991), preambular paragraph 4; S/RES/743 (21 February 1992), preambular paragraph 5; S/RES/1021 (22 November 1995), preambular paragraph 5.

⁶ See, e.g., S/RES/724 (15 December 1991), operative paragraph 5; S/RES/1021 (22 November 1995), preambular paragraph 6.

⁷ S/RES/713 (25 September 1991), operative paragraph 6.

⁸ S/RES/713 (25 September 1991), operative paragraph 6.

⁹ S/RES/1021 (22 November 1995), operative paragraph 1.

¹⁰ S/RES/713 (25 September 1991), operative paragraph 6.

of the former Yugoslavia.¹¹ The Council initially elaborated no exceptions to the embargo, however exemptions were in time provided for weapons and military equipment being imported into the territories of the former Yugoslavia for the use of United Nations forces such as the United Nations Protection Force (UNPROFOR),¹² its successor the Multinational Implementation Force (IFOR),¹³ and international police forces.¹⁴

4.4 The administration, monitoring and enforcement of the former Yugoslavia sanctions régime

During the course of the sanctions against the former Yugoslavia, the Security Council bestowed responsibility for the administration, implementation and enforcement of the sanctions upon a range of actors, including a Sanctions Committee, the Secretary-General, States and regional organizations, as well as to entities established by these regional organizations with specific monitoring and verification responsibilities in relation to the

¹¹ By resolution 727 (1992), of 8 January 1992, adopted after the disintegration of the Socialist Federal Republic of Yugoslavia, the Council had reaffirmed the embargo and decided that it would apply in accordance with paragraph 33 of the further report of the Secretary-General pursuant to resolution 721 (1991), such that it would continue to apply to "all areas that have been part of Yugoslavia, any decisions on the question of the recognition of the independence of certain republics notwithstanding." See: S/RES/727 (8 January 1992), operative paragraph 6; S/23363 and Add.1 (5 and 7 January 1992): *Further report of the Secretary-General pursuant to resolution 721 (1991)*, paragraph 33.

¹² The Council established UNPROFOR in S/RES/743 (21 February 1992), operative paragraph 2, providing in operative paragraph 11 of the same resolution for an exemption to the embargo for weapons and military equipment destined for the sole use of UNPROFOR.

¹³ The Council authorised the establishment of IFOR in S/RES/1031 (15 December 1995), operative paragraph 14. It provided for an exemption to the embargo for weapons and military equipment destined for the sole use of the Member States participating in the force in operative paragraph 22 of the same resolution.

¹⁴ The Council decided to exempt international police forces from the embargo in S/RES/1031 (15 December 1995), operative paragraph 22. This was in anticipation of the establishment of the U.N. Civilian Police Force, which the Council foreshadowed in operative paragraph 30 of the same resolution.

implementation of the arms embargo and other sanctions régimes applied to address the situation in the former Yugoslavia.¹⁵

4.4.1 The former Yugoslavia Sanctions Committee

Almost three months after initiating the former Yugoslavia sanctions régime, the Council established a Sanctions Committee to oversee the embargo's implementation.¹⁶ The Committee (the "former Yugoslavia Sanctions Committee" or the "724 Committee") was to report to the Council on its work and with its observations and recommendations, and to undertake the following tasks: a) To examine reports submitted by States regarding action taken to implement the embargo;¹⁷ b) To seek further information from States regarding action taken to implement the embargo;¹⁸ c) To consider information concerning violations of the embargo and to make recommendations to increase its effectiveness;¹⁹ and d) To recommend appropriate measures in response to violations of the embargo and to provide information to the Secretary-General for distribution to Member States.²⁰ Although the Committee's mandate in respect of the arms embargo was not subsequently modified, the Committee did assume a vast array of responsibilities relating to the administration, implementation and enforcement of the two other sanctions régimes that were imposed

¹⁵ For information on the responsibilities of those entities in relation to monitoring and verification of the other régimes, see sections 7.4 [on the administration, implementation and enforcement of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) to address the situation in Bosnia and Herzegovina] and 9.4 [on the administration, implementation and enforcement of the sanctions against the Bosnian Serbs], below.

¹⁶ S/RES/724 (15 December 1991), operative paragraph 5(b).

¹⁷ S/RES/724 (15 December 1991), operative paragraph 5(b)(i).

¹⁸ S/RES/724 (15 December 1991), operative paragraph 5(b)(ii).

¹⁹ S/RES/724 (15 December 1991), operative paragraph 5(b)(iii).

²⁰ S/RES/724 (15 December 1991), operative paragraph 5(b)(iv).

during its tenure to address the situation in the former Yugoslavia.²¹ The Committee was ultimately dissolved in November 1996, after the termination of the three sanctions régimes in connection with which it had assumed responsibilities.²²

By the time of its dissolution, the 724 Committee had held 142 formal meetings,²³ submitting three reports to the Security Council on its activities.²⁴ In its first report, the Committee noted that it had received a limited amount of information on violations of the embargo and that it was still searching for additional information.²⁵ It appealed to parties with any information relating to actual or suspected violations of the arms embargo to provide it with such information.²⁶ In observations published in its second report, the Committee expressed disappointment at the lack of information it had received about alleged violations of sanctions, whilst the international media had been “replete” with reports indicating that the arms embargo was been breached “in a blatant manner”.²⁷ The

²¹ For details relating to the 724 Committee’s responsibilities under those sanctions régimes, see sections 7.4 [on the administration, implementation and enforcement of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) to address the situation in Bosnia and Herzegovina] and 9.4 [on the administration, implementation and enforcement of the sanctions against the Bosnian Serbs], below.

²² The Security Council provided for the subsequent dissolution of the Committee in S/RES/1074 (1 October 1996), operative paragraph 6. In accordance with that operative paragraph, the Committee was actually dissolved upon the publication of its final report, on 15 November 1996: see *Final Report of the 724 Committee*, below note 24, paragraph 87.

²³ A/52/2 (1997): *Report of the Security Council: 16 June 1996-15 June 1997*, p. 273.

²⁴ See: S/23800 (13 April 1992): *Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia* (hereafter “*First Report of the 724 Committee*”) [containing a report of the Committee’s activities from its establishment on 15 December 1991 until 9 April 1992]; S/25027 (30 December 1992): *Second Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia* (hereafter “*Second Report of the 724 Committee*”) [containing a report of the Committee’s activities from 9 April until 29 December 1992]; S/1996/946 (15 November 1996), annex: *Final Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia*, (hereafter “*Final Report of the 724 Committee*”) [containing a summary of the Committee’s activities from January 1993 until the termination of the sanctions régime on 1 October 1996].

²⁵ *First Report of the 724 Committee*, *ibid*, paragraph 12.

²⁶ *Ibid*.

²⁷ *Second Report of the 724 Committee*, above note 24, paragraph 24.

Committee also observed that the lack of an independent monitoring mechanism had inhibited its ability to obtain original information and to follow-up on alleged violations.²⁸ In that respect, however, it was grateful for information received from sources such as the North Atlantic Treaty Organization (NATO) and the Western European Union (WEU) monitoring teams in the Adriatic Sea, and it looked forward to working in cooperation with the EC/CSCE/OSCE Sanctions Assistance Missions (SAMs).²⁹ In observations published in its final report relating to the implementation of the arms embargo, the Committee noted that the embargo would have been significantly more effective if there had been a system to monitor air and land freight traffic, akin to the maritime monitoring that was effected in the Adriatic Sea by NATO and the WEU and to the monitoring conducted by the Sanctions Assistance Missions (SAMs) of land and Danube traffic.³⁰

4.4.2 The Secretary-General

The Secretary-General was not requested to undertake many responsibilities with respect to the implementation of the arms embargo. In December 1991 the Secretary-General was requested to provide all necessary assistance to the 724 Committee and to make the necessary arrangements in the Secretariat for that purpose.³¹ In November 1992, the Council requested that the Secretary-General coordinate the submission by States and regional agencies or arrangements of reports outlining action taken to halt maritime and riparian traffic to verify that cargo was not being transported in violation of the arms

²⁸ *Ibid.*, paragraph 25.

²⁹ *Ibid.* For information relating to the activities of the WEU, NATO and the SAMs, see below.

³⁰ See the Final Report of the 724 Committee, above note 24, paragraph 85. For further information relating to the roles of these actors, see below.

³¹ S/RES/724 (15 December 1991), operative paragraph 5(d).

embargo.³² At the same time the Council also requested that the Secretary-General submit to it recommendations for facilitating the implementation of its resolutions by deploying observers on the borders of Bosnia and Herzegovina.³³ In November 1995, the Secretary-General was also requested to play a reporting role leading to the termination of the sanctions.³⁴

4.4.3 States

In addition to the general obligation flowing from the application of the arms embargo to do everything in their power to implement the arms embargo within their own jurisdictions, States were also requested, authorized or required by the Security Council to take various actions to implement, monitor or enforce the embargo. The Council sometimes addressed its requests or demands to States in general, and sometimes to particular States, such as riparian States and States in the region.

i. States in general

In December 1991 the Council called upon all States to cooperate fully with the 724 Committee in the fulfilment of its tasks concerning the effective implementation of the arms embargo.³⁵ In February 1992, the Council further called upon all States to report to the 724

³² S/RES/787 (16 November 1992), operative paragraph 14. The Council had authorized States to take such action in the same resolution – see below.

³³ S/RES/787 (16 November 1992), operative paragraph 16.

³⁴ S/RES/1021 (22 November 1995), operative paragraphs 1, 2. For details relating to the Secretary-General's role in the termination of the sanctions, see note 56, below.

³⁵ S/RES/724 (15 December 1991), operative paragraph 5(c). The Council reiterated that call in a number of subsequent resolutions. See: S/RES/740 (7 February 1992), operative paragraph 8; S/RES/757 (30 May 1992), operative paragraph 14.

Committee any information brought to their attention concerning violations of the arms embargo.³⁶

In November 1992, the Council invoked Chapters VII and VIII of the Charter in calling upon States, acting nationally or through regional agencies or arrangements, to use the necessary measures to halt outward and inward maritime shipping in order to inspect and verify that cargo did not violate the arms embargo.³⁷ At the same time the Council also requested States to report, in coordination with the Secretary-General, to the Security Council on any measures taken to ensure that maritime or riparian shipping did not violate the arms embargo,³⁸ and to provide, in accordance with the Charter, such assistance as might be required by States acting in pursuance of the authority to use necessary measures to implement the embargo.³⁹

In April 1993, the Council required States in general to take the following action: to detain vessels, freight vehicles, rolling stock, aircraft and cargoes suspected of having violated the sanctions.⁴⁰ At the same time, the Council also requested or called upon States in general: to bring proceedings against persons and entities violating the embargo and to

³⁶ S/RES/740 (7 February 1992), operative paragraph 8.

³⁷ S/RES/787 (16 November 1992), operative paragraph 12. This call was reaffirmed in S/RES/820 (17 April 1993), operative paragraph 29.

³⁸ S/RES/787 (16 November 1992), operative paragraph 14.

³⁹ S/RES/787 (16 November 1992), operative paragraph 15. It is unclear exactly which provision or provisions of the Charter the Council had in mind when it requested that assistance be provided "in accordance with the Charter". It is likely, however, that the Council was implicitly invoking Article 2(5), which provides: "All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving any assistance to any state against which the United Nations is taking preventive or enforcement action".

⁴⁰ S/RES/820 (17 April 1993), operative paragraph 25. In the same operative paragraph the Council noted that detained vessels, freight vehicles, rolling stock, aircraft and cargoes might be subject to forfeit to the detaining State.

impose appropriate penalties;⁴¹ and to provide such assistance as was required by riparian States to ensure that shipping on the Danube did not violate the embargo.⁴²

ii. Riparian and Neighbour States

The Security Council first outlined tasks required specifically of States neighbouring or located in the region surrounding the Federal Republic of Yugoslavia (Serbia-Montenegro) in November 1992. At that time it reaffirmed the responsibility of riparian States to take the measures necessary to ensure that shipping along the Danube did not violate the embargo, including taking action to halt shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the embargo.⁴³

In April 1993, the Council called upon riparian States to ensure that cabotage traffic along the Danube river between Vidin/Calafat and Mohacs was adequately monitored so that no vessels suspected of having violated the embargo were permitted to pass,⁴⁴ and reaffirmed the responsibility of riparian States to take the necessary measures to ensure that shipping on the Danube did not violate the embargo.⁴⁵

In May 1995 the Council requested the Government of Romania, with the assistance of the EU/OSCE Sanctions Assistance Missions, to monitor the use of Romanian locks while repairs were being carried out to locks on the Serbian side of the river, including if necessary by inspections of the vessels and their cargo, in order to ensure that no goods were loaded or unloaded during the passage by the vessels through the locks of the Iron

⁴¹ S/RES/820 (17 April 1993), operative paragraph 19.

⁴² S/RES/820 (17 April 1993), operative paragraph 17.

⁴³ S/RES/787 (16 November 1992), operative paragraph 13. This responsibility was again reaffirmed by the Council in S/RES/820 (17 April 1993), operative paragraph 17.

⁴⁴ S/RES/820 (17 April 1993), operative paragraph 16.

⁴⁵ S/RES/820 (17 April 1993), operative paragraph 17.

Gates I system.⁴⁶ The Council also requested Romania to deny passage through the locks on its bank of the Danube to any vessel suspected to have violated relevant Council resolutions, thus encompassing violations of the embargo.⁴⁷

4.4.4 Regional organizations and other regional entities involved in the implementation, monitoring and enforcement of the sanctions⁴⁸

Among the regional organizations that played a role in the implementation and enforcement of the arms embargo were: the European Community and its successor the European Union (the EC/EU);⁴⁹ the Conference on Security and Cooperation in Europe and its successor the Organization for Security and Cooperation in Europe (the CSCE/OSCE);⁵⁰ the Western European Union (WEU) and the North Atlantic Treaty Organization (NATO).⁵¹ A number of these regional organizations also created subsidiary

⁴⁶ S/RES/992 (11 May 1995), operative paragraph 3.

⁴⁷ S/RES/992 (11 May 1995), operative paragraph 4.

⁴⁸ For good summaries of the activities undertaken by regional organizations and other regional entities to implement and enforce the sanctions, see: *Final Report of the 724 Committee*, above note 24, paragraph 79; S/1996/776 (24 September 1996), annex: *Report of the Copenhagen Round Table on United Nations Sanctions in the Case of the Former Yugoslavia* (hereafter "*Report of the Copenhagen Round Table*"), paragraphs 25-60.

⁴⁹ The EC/EU played a major role in the implementation of sanctions by establishing a number of entities to facilitate such implementation. The details relating to these entities appear later in this paragraph and accompanying footnotes.

⁵⁰ Like the EC/EU, the CSCE/OSCE also played a major role in the implementation of sanctions by establishing a number of entities to facilitate such implementation. The details relating to these entities also appear later in this paragraph and accompanying footnotes.

⁵¹ The WEU and NATO patrolled the Adriatic Sea from July 1992 to June 1993 in order to ensure compliance by maritime traffic with the resolutions of the Security Council. From June 1993 the two organizations combined their efforts to form an operation entitled "Sharp Guard". By the time WEU and NATO concluded their activities to enforce the sanctions, in June 1996, the organizations had challenged over 70,000 vessels and inspected almost 6,000 at sea. For further details relating to these activities of the WEU and NATO, see: *Final Report of the 724 Committee*, above note 24, paragraph 79(b); *Report of the Copenhagen Round Table*, above note 48, paragraphs 48-50.

In addition to its activities in the Adriatic Sea, the WEU also established a "Danube Mission", which commenced operations in June 1993, assisting Bulgaria, Hungary and Romania in their efforts to prevent violations of sanctions and ensure that shipping on the Danube was in accordance with the resolutions of the Security Council. For further details relating to the activities of the WEU Danube Mission, see: *Final Report of the 724 Committee*, above note 24, paragraph 79(c); *Report of the Copenhagen Round Table*, above note 48, paragraphs 41-42.

entities to facilitate resolution of the conflict in the former Yugoslavia in general or the implementation of sanctions in particular. The major entity established to address the conflict in the former Yugoslavia in general was the Conference on Yugoslavia (CY), which subsequently became the International Conference on the Former Yugoslavia (ICFY).⁵² Among the entities established with particular responsibilities for facilitating the implementation of sanctions were: the EC/EU/CSCE/OSCE Sanctions Assistance Missions (SAMs);⁵³ the EC/EU/CSCE/OSCE Sanctions Coordinator;⁵⁴ and the European Commission/CSCE/OSCE Sanctions Assistance Missions Communications Centre (SAMCOMM).⁵⁵

⁵² The CY was established by the EC. In July 1992 the Security Council invited the EC, in cooperation with the Secretary-General, to examine the possibility of broadening the CY to provide it with “new momentum” in the search for a resolution to the conflict: S/24346 (24 July 1992): *Presidential Statement of 24 July 1992*. As a result, the ICFY was convened in London from 26 to 28 August 1992. The Conference adopted a Statement of Principles for a negotiated settlement of the problems of the former Yugoslavia. Subsequently, the ICFY was a key actor in facilitating the conclusion of the Vance-Owen peace plan and the Dayton Peace Agreement. For a summary of the CY/ICFY process, see *Report of the Copenhagen Round Table*, above note 48, paragraphs 25-27.

⁵³ The SAMs consisted largely of customs officers, who were deployed in States neighbouring the Federal Republic of Yugoslavia (Serbia-Montenegro) to help prevent the violation of the arms embargo. The Council welcomed the role of the SAMs in support of the implementation of the arms embargo and invited it to work in close cooperation with the 724 Committee in S/RES/820 (17 April 1993), operative paragraph 20. For further details relating to the work of the SAMs, see: *Final Report of the 724 Committee*, above note 24, paragraph 79(a); *Report of the Copenhagen Round Table*, above note 48, paragraphs 32-35.

⁵⁴ The position of the Sanctions Coordinator was established by the EC and the then CSCE in February 1993. The Sanctions Coordinator’s mandate included: assessing sanctions implementation, as well as the effects of the sanctions; advising States on customs and legal matters; bringing violations to the attention of the CSCE/OSCE, the 724 Committee and concerned Governments; and consulting with Governments on the investigation and prosecution of alleged violations of the sanctions: S/25272 (10 February 1993) [containing the full mandate of the Sanctions Coordinator]. The Security Council welcomed the appointment of the Sanctions Coordinator and invited him to work in close cooperation with the 724 Committee in S/RES/820 (17 April 1993), operative paragraph 20. For summaries of the Sanctions Coordinator’s activities, see: *Final Report of the 724 Committee*, above note 24, paragraph 79(a); *Report of the Copenhagen Round Table*, above note 48, paragraphs 36-38.

⁵⁵ SAMCOMM was established by the European Commission when it created the SAMs, in order to serve as a focal point for the exchange of information between the SAMs and the authorities of their host States. For summaries of SAMCOMM’s activities, see: *Final Report of the 724 Committee*, above note 24, paragraph 79(a); *Report of the Copenhagen Round Table*, above note 48, paragraphs 33-35.

4.5 Termination of the former Yugoslavia sanctions régime

The arms embargo remained in place for almost five years, before being terminated in June 1996. In November 1995 the Council decided that the embargo would be terminated in a staggered manner once the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia (Serbia and Montenegro) had all signed the Dayton Peace Agreement.⁵⁶ Ultimately, the arms embargo was terminated completely on 18 June 1996, by a *note verbale* from the Chairman of the 724 Committee to all States.⁵⁷

4.6 Notable aspects of the former Yugoslavia sanctions régime

The sanctions régime against the former Yugoslavia was notable for a number of reasons. First, it was the first sanctions régime to be applied against a target State that subsequently dissolved. Its continued application against the successor States of the former Yugoslavia also made it the first sanctions régime to be maintained against targets that were different from the target against which it had originally been applied. Second, an unprecedented number of regional actors were involved in the implementation and

⁵⁶ S/RES/1021 (22 November 1995), operative paragraph 1. The staggered termination of the arms embargo was to work thus: after the Secretary-General had reported that the parties had signed the Peace Agreement, the arms embargo would continue to be applied in its entirety for a period of ninety days [operative paragraph 1(a)]. During the following period of ninety days, most of the embargo would cease to apply, with the exception of heavy weapons, military aircraft and helicopters, which would continue to be banned until a regional arms control agreement, comprising part of the Peace Agreement, had taken effect [operative paragraph 1(b)]. Ninety days later, upon the submission of a report by the Secretary-General that the regional arms control agreement had been implemented, the remaining aspects of the arms embargo would be terminated [operative paragraph 1(c)].

⁵⁷ SCA/8/96(4) (18 June 1996): *Note verbale from the Chairman of the 724 Committee to all States*. The Secretary-General had earlier submitted the reports required by operative paragraph 1 of resolution 1021 (1995) in the following sequence: S/1995/1034 (14 December 1995) [reporting that the parties had formally signed the Peace Agreement that day in Paris]; S/1996/433 (13 June 1996) and S/1996/442 (17 June 1996) [reporting that the regional arms control agreement had been implemented]. For further details relating to this sequence of events, see: *Final Report of the 724 Committee*, above note 24, paragraph 4(f).

enforcement of the embargo.⁵⁸ Finally, the embargo was also notable for the prominent debate that raged concerning whether it in fact facilitated or undermined the goal of re-establishing peace and stability. It was alleged that the continued application of the arms embargo fuelled the conflict by strengthening the hand of those who were able to circumvent it, such as the Bosnian Serbs, at the expense of others who were not able to acquire arms as readily, such as the Bosnian Government. The argument was frequently made before the Security Council that the continued application of the arms embargo was preventing Bosnia and Herzegovina from exercising its inherent right to self-defence under Article 51 of the Charter of the United Nations.⁵⁹ Moreover, those arguing for the lifting of the embargo as it applied to the Government of Bosnia and Herzegovina also contended that if the Bosnian

⁵⁸ When the Security Council provided for the suspension and ultimate termination of the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro) to address the situation in Bosnia and Herzegovina and against the Bosnian Serbs, it paid tribute to the significant contributions played by those various actors to the achievement of a negotiated peace: see S/RES/1022 (22 November 1995), operative paragraph 9. Although that tribute was extended in the context of a decision related to the other two sanctions régimes applied to address the situation in the former Yugoslavia, it can nevertheless be considered to extend to the role played by those actors in relation to the arms embargo, as the actors undertook actions to facilitate the implementation of the arms embargo at the same time that they were facilitating the implementation of the other sanctions régimes. The Copenhagen Round-Table opined that the “unprecedented formula of a coordinated, inter-institutional, international cooperative effort” to assist States in the observance of sanctions might have been a “decisive factor” in making the sanctions a “valuable and effective policy instrument”: *Report of the Copenhagen Round Table*, above note 48, paragraph 5.

⁵⁹ For examples of this position, see S/PV.3370 (27 April 1994), pp. 3-5 (Pakistan), pp. 6-7 (Turkey), pp. 8-11 (Malaysia), pp. 11-13 (Islamic Republic of Iran), pp. 14-16 (Saudi Arabia), pp. 16-17 (Tunisia), pp. 17-20 (Egypt), pp. 20-22 (Mr. Algabid), pp. 22-23 (Bosnia and Herzegovina), pp. 24-25 (Oman), pp. 27-28 (Djibouti), pp. 34-36 (Croatia), pp. 36-37 (Sudan), pp. 37-38 (Bangladesh).

The Bosnian Government initially raised a similar argument before the International Court of Justice as part of multiple claims against the Government of Serbia-Montenegro, principally under the Genocide Convention: see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugo. (Serbia and Montenegro))*, Provisional Measures, 1993 ICJ Rep. 3 (Order of Apr. 8); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugo. (Serbia and Montenegro))*, Provisional Measures, 1993 ICJ Rep. 325 (Order of Sept. 13). For a summary of the legal arguments for terminating the arms embargo against Bosnia and Herzegovina, see: Scott, Craig, Quresho, Abid, Michell, Paul, Kalajdzic, Jasminka, Copeland, Peter, Chang, Francis, ‘A Memorial for Bosnia: Framework of Legal

Government were able to gain more ready access to arms, then the Bosnian Serbs might be deterred from pursuing a policy of aggression and thus induced to return to the negotiating table. Although the counter-argument was also made, to the effect that an increase in the flow of arms into Bosnia and Herzegovina, which would likely have resulted from the lifting of the embargo against the Bosnian Government, could only have exacerbated the conflict,⁶⁰ the example of the former Yugoslavia arms embargo raises the question of whether it suits the interests of the maintenance of international peace and security to apply an arms embargo against multiple parties where the impact of the embargo might result in a significant imbalance in relative defensive capacity between the parties to a conflict.

Arguments Concerning the Lawfulness of the Maintenance of the United Nations Security Council's Arms Embargo on Bosnia and Herzegovina' (1994) 16 *Mich. JIL* 1-134.

⁶⁰ For examples of this position, see S/PV.3370 (27 April 1994), pp. 25-27 (Russian Federation), pp. 28-29 (New Zealand), pp. 29-30 (Canada), pp. 31-32 (Sweden), pp. 32-33 (Mr. Djokic), pp. 33-34 (Norway).

5. *The Somalia sanctions régime*

The Security Council imposed sanctions against Somalia in January 1992. The Somalia sanctions régime consists of an arms embargo, which has been applied for more than a decade without any significant modifications. In the late-1990s the Somalia embargo gained a reputation as a sanctions régime that was honoured more in the breach than the observation, as reports of its violation were commonplace. Recently, however, the Somalia embargo has received increased attention, with the Council establishing a Panel of Experts in order to recommend ways to strengthen the implementation and enforcement of the embargo.

5.1 The constitutional basis for imposing sanctions against Somalia

In January 1992 the Security Council adopted resolution 733 (1992), in which it expressed alarm at the rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from conflict, and noted its awareness of the potential consequences of the conflict for stability and peace in the region.¹ The Council further expressed concern that the continuation of the situation constituted a threat to international peace and security,² recalled its primary responsibility under the U.N. Charter for the maintenance of international peace and security,³ and invoked Chapter VII of the Charter before imposing an arms embargo against Somalia.⁴ In subsequent resolutions

¹ S/RES/733 (23 January 1992), preambular paragraph 3.

² S/RES/733 (23 January 1992), preambular paragraph 4.

³ S/RES/733 (23 January 1992), preambular paragraph 5.

⁴ The invocation of Chapter VII appeared in the same operative paragraph by which the Council imposed the embargo: see S/RES/733 (23 January 1992), operative paragraph 5.

related to the arms embargo, the Council has reaffirmed that the situation in Somalia continued to constitute a threat to international peace and security,⁵ noted with concern that the continued flow of weapons to Somalia undermines peace and security,⁶ and invoked Chapter VII.⁷ On numerous occasions the Council has also reaffirmed the obligation of States to implement the arms embargo,⁸ and expressed deep concern at reports of the illicit delivery of weapons and military equipment to Somalia in violation of the arms embargo.⁹

5.2 The objective of the Somalia sanctions régime

The objective of the sanctions régime is to establish peace and stability in Somalia.¹⁰

The Council has not set any explicit requirements for the termination of the sanctions, stating that the embargo would remain in place until it decided otherwise.¹¹

⁵ See, e.g., S/RES/751 (24 April 1992), preambular paragraph 6; S/RES/767 (27 July 1992), preambular paragraph 7; S/RES/775 (28 August 1992), preambular paragraph 6; S/RES/794 (3 December 1992), preambular paragraph 3; S/RES/954 (4 November 1994), preambular paragraph 21; S/RES/1474 (8 April 2003), preambular paragraph 7 [determining that the situation in Somalia constituted a threat to international peace and security in the region].

⁶ See, e.g., S/RES/1407 (3 May 2002), preambular paragraph 3; S/RES/1425 (22 July 2002), preambular paragraph 2; S/RES/1474 (8 April 2003), preambular paragraph 5.

⁷ See, e.g., S/RES/954 (4 November 1994), preambular paragraph 21; S/RES/1407 (3 May 2002), preambular paragraph 5; S/RES/1425 (22 July 2002), preambular paragraph 6; S/RES/1474 (8 April 2003), preambular paragraph 8.

⁸ See, e.g., S/RES/767 (27 July 1992), operative paragraph 10; S/RES/775 (28 August 1992), operative paragraph 12; S/RES/814 (26 March 1993), operative paragraph 11; S/RES/886 (18 November 1993), operative paragraph 11; S/RES/897 (4 February 1994), operative paragraph 9; S/RES/923 (31 May 1994), operative paragraph 6; S/RES/954 (4 November 1994), operative paragraph 12; S/PRST/1995/15: *Presidential Statement of 6 April 1995* (6 April 1995); S/PRST/1996/4: *Presidential Statement of 24 January 1996* (24 January 1996); S/PRST/1997/8: *Presidential Statement of 27 February 1997* (27 February 1997); S/PRST/1997/57: *Presidential Statement of 23 December 1997* (23 December 1997); S/PRST/1999/16: *Presidential Statement of 27 May 1999* (27 May 1999); S/PRST/1999/31: *Presidential Statement of 12 November 1999* (12 November 1999); S/PRST/2000/22: *Presidential Statement of 29 June 2000* (29 June 2000); S/RES/1356 (19 June 2001), operative paragraph 1; S/PRST/2001/1: *Presidential Statement of 11 January 2001* (11 January 2001); S/PRST/2001/30: *Presidential Statement of 31 October 2001* (31 October 2001); S/PRST/2002/8 (28 March 2002); S/RES/1474 (8 April 2003), operative paragraph 1.

⁹ See, e.g., S/PRST/1999/16: *Presidential Statement of 27 May 1999* (27 May 1999);

¹⁰ S/RES/733 (23 January 1992), operative paragraph 5.

¹¹ S/RES/733 (23 January 1992), operative paragraph 5.

5.3 The scope of the Somalia sanctions régime

When it established the sanctions régime, the Security Council required all States to implement immediately a general and complete embargo on all deliveries of weapons and military equipment to Somalia.¹² The Council initially elaborated no explicit exemptions from the embargo. It is likely, however, that the Council's authorization of the establishment of the United Nations Operation in Somalia (UNOSOM) and its successor the United Nations Operation in Somalia II (UNOSOM II), as well as of the United Task Force (UNITAF), each of which comprised significant military components and were endowed with a mandate under Chapter VII of the Charter of the United Nations, amounted to an implicit exemption from the embargo for those entities and their activities.¹³

The Security Council has subsequently authorized explicit exemptions from the arms embargo for protective clothing exported to Somalia for the personal use of United Nations personnel, representatives of the media and humanitarian and development workers,¹⁴ and for supplies of non-lethal military equipment intended solely for humanitarian or protective use.¹⁵ In July 2002, responding to recommendations made by the preparatory team of experts on the Somalia embargo, the Security Council clarified that the embargo prohibited

¹² S/RES/733 (23 January 1992), operative paragraph 5.

¹³ For the establishment of UNOSOM and its successor UNOSOM II, as well as of UNITAF, see section 5.4, below. For the purposes of identifying an implicit exemption from the arms embargo for UNOSOM and UNITAF, the provisions of resolution 794 (1992) are significant. It is noteworthy that the endowment of those operations with a Chapter VII mandate to use necessary measures to establish a secure environment for humanitarian activities [see, e.g., S/RES/794 (3 December 1992), operative paragraphs 6, 7, 8, 10, 11, 12, 13, 15] is located in the same resolution in which the Council calls upon States, acting nationally or through regional agencies or arrangements, to use such measures as may be necessary to ensure the strict implementation of the arms embargo [see S/RES/794 (3 December 1992), operative paragraph 16].

¹⁴ S/RES/1356 (19 June 2001), operative paragraph 2.

the financing of all acquisitions and deliveries of weapons and military equipment.¹⁶ At the same time it also decided that the embargo prohibited the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities.¹⁷

5.4 The administration, monitoring and enforcement of the Somalia sanctions régime

The Security Council has called upon a number of actors to perform roles in the administration, implementation and enforcement of the Somalia sanctions régime, including a Sanctions Committee, the Secretary-General, States, regional organizations, United Nations operations established to address the situation in Somalia, and a team and a Panel of experts tasked with making recommendations for strengthening the embargo and making it more effective.

5.4.1 The Somalia Sanctions Committee

Three months after it established the Somalia arms embargo, the Council established a Sanctions Committee (the “Somalia Sanctions Committee” or the “751 Committee”) to report to the Council with its observations and recommendations and to undertake the following tasks: (a) To seek from all States information regarding action taken to implement the arms embargo;¹⁸ (b) To consider any information concerning violations of the embargo and make recommendations to the Council on how to increase the effectiveness of the

¹⁵ S/RES/1356 (19 June 2001), operative paragraph 3. The exemption for non-lethal military equipment was not absolute, however - it required prior approval by the 751 Committee: S/RES/1356 (19 June 2001), operative paragraph 4.

¹⁶ S/RES/1425 (22 July 2002), operative paragraph 1.

¹⁷ S/RES/1425 (22 July 2002), operative paragraph 2.

¹⁸ S/RES/751 (24 April 1992), operative paragraph 11(a).

embargo;¹⁹ and (c) To recommend appropriate measures in response to violations of the embargo and to provide information on a regular basis to the Secretary-General for general distribution to Member States.²⁰ The Security Council has subsequently bestowed the following additional responsibilities upon the Committee: (d) To seek the cooperation of States neighbouring Somalia in the effective implementation of the embargo;²¹ (e) To decide upon requests for exemptions for non-lethal military equipment intended solely for humanitarian or protective use;²² (f) To forward to the Council the report of the team of experts;²³ (g) To notify the Council of any lack of cooperation with it or the team of experts;²⁴ and (h) To send a mission, led by the Chairman of the Committee, to the region at the earliest possible stage, in order to demonstrate the Security Council's determination to give full effect to the arms embargo.²⁵

Since its establishment, the Somalia Sanctions Committee has issued eight annual reports.²⁶ The Committee has not been among the more active of the Sanctions Committees,

¹⁹ S/RES/751 (24 April 1992), operative paragraph 11(b).

²⁰ S/RES/751 (24 April 1992), operative paragraph 11(c).

²¹ S/RES/954 (4 November 1994), operative paragraph 12.

²² S/RES/1356 (19 June 2001), operative paragraph 4.

²³ S/RES/1407 (3 May 2002), operative paragraph 2.

²⁴ S/RES/1407 (3 May 2002), operative paragraph 7.

²⁵ S/RES/1474 (8 April 2003), operative paragraph 8. The Council had been encouraging the Chairman of the 751 Committee to undertake such a mission for some time. It made reference to the fact that the Chairman was scheduled to undertake a mission to the region in October 2002: S/RES/1425 (22 July 2002), operative paragraph 10 [requesting the Panel of Experts to brief the Chairman prior to his mission, which was then scheduled to take place in October 2002]. At the time of writing this mission has still not taken place.

²⁶ As with the annual reports of other Sanctions Committees, the annual reports of the 751 Committee have been circulated as official Security Council documents, in the form of an annex to a letter from the Chairman of the 751 Committee addressed to the President of the Security Council. The official document numbers and dates of circulation for the letters to which the reports are annexed are as follows: S/1996/17 (16 January 1996), annex: *Report of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia* (hereafter "*First report of the 751 Committee*") [outlining the activities of the Committee from its establishment in 1992 until the end of December 1995]; S/1997/16 (7 January 1997), annex: *Report of the 751 Committee for 1996*; S/1997/1029 (31 December 1997), annex: *Report of the*

meeting on average less than two times per year during its first eleven years.²⁷ In fact, the number of meetings held by the 751 Committee over its first decade amounted to less than the total held by the Iraq Sanctions Committee in its first five months.²⁸ The 751 Committee's annual reports have tended to be brief, with few substantive recommendations or observations. The Committee has consistently noted that its ability to monitor the sanctions effectively is dependent upon the cooperation of States and organizations in a position to provide it with pertinent information.²⁹ In its most recent annual report, the Committee noted that it had increased its level of activity markedly during 2002, as a result of a renewed focus upon the Somalia arms embargo by the Council and due to the Council's decision to establish a Panel of Experts on Somalia.³⁰ The Committee noted that it expected that the work of the Panel and the planned mission to the region by the Chairman of the Committee would increase the visibility and effectiveness of the embargo.³¹ It again

751 Committee for 1997; S/1998/1226 (28 December 1998), annex: Report of the 751 Committee for 1998; S/1999/1283 (28 December 1999), annex: Report of the 751 Committee for 1999; S/2000/1226 (21 December 2000), annex: Report of the 751 Committee for 2000; S/2001/1259 (26 December 2001), annex: Report of the 751 Committee for 2001; S/2002/1430 (30 December 2002), annex: Report of the 751 Committee for 2002.

²⁷ The Committee had only met on nineteen occasions from the time of its establishment in April 1992 to the end of July 2002: A/57/2 (2002): *Report of the Security Council: 16 June 2001-31 July 2002*, p. 53.

²⁸ From its establishment in April 1992 until the end of 2001 the Somalia Sanctions Committee had held a total of eighteen meetings: *Index to Proceedings of the Security Council for 2001 (2002)* United Nations, New York, p. xiii. In contrast, the Iraq Sanctions Committee held 22 meetings between August and December 1990: *Index to Proceedings of the Security Council for 1990 (1991)* United Nations, New York, p. xii.

²⁹ See, e.g., *First report of the 751 Committee*, above note 26, paragraph 19; *Report of the 751 Committee for 1996*, above note 26, paragraph 4; *Report of the 751 Committee for 1998*, above note 26, paragraph 4; *Report of the 751 Committee for 1999*, above note 26, paragraph 8.

³⁰ *Report of the 751 Committee for 2002*, above note 26, paragraph 20.

³¹ *Ibid.*

noted, however, that it continued to rely on the cooperation of States to provide information relating to violations of the embargo.³²

5.4.2 The Secretary-General

When the Council adopted resolution 733 (1992), establishing the Somalia sanctions régime, it requested the Secretary-General to report on the overall implementation of that resolution.³³ In March 1993, the Council requested the Secretary-General to support from within Somalia the implementation of the arms embargo, utilizing as available and appropriate the forces of UNOSOM II and to report on the subject with recommendations regarding more effective measures if necessary.³⁴ Since early 2002, the Security Council has increased the Secretary-General's responsibilities in relation to the administration, implementation and enforcement of the Somalia sanctions. Among the tasks requested of the Secretary-General have been the following: a) Establishing a preparatory team of experts on the Somalia embargo;³⁵ b) Working actively with various parties who had the capacity to contribute to the monitoring and enforcement of the embargo;³⁶ c) Establishing the Panel of Experts on the Somalia embargo;³⁷ d) Reporting on the technical assistance and cooperation provided in order to enhance administrative and judicial capacities throughout Somalia to monitor and give effect to the embargo, and reporting on the measures taken by States to

³² *Ibid.*

³³ S/RES/733 (23 January 1992), operative paragraph. 10.

³⁴ S/RES/814 (26 March 1993), operative paragraph 10.

³⁵ The Council requested the Secretary-General to establish the preparatory team in S/RES/1407 (3 May 2002), operative paragraph 1. For the Secretary-General's letter detailing the appointments made, see S/2002/575 (23 May 2002).

³⁶ S/RES/1407 (3 May 2002), operative paragraph 7.

³⁷ S/RES/1425 (22 July 2002), operative paragraphs 3, 4. For the Secretary-General's letter detailing the appointments made, see S/2002/951 (4 September 2002).

ensure the effective implementation of the embargo;³⁸ e) Implementing the Council's decision to re-establish the Panel of Experts;³⁹ and f) Establishing the Somalia Monitoring Group and making the necessary financial arrangements to support its work.⁴⁰

5.4.3 States

Since establishing the Somalia sanctions régime, the Security Council has regularly stressed the need for the observance and strict monitoring of the embargo,⁴¹ and reaffirmed or stressed the obligation of States to implement the embargo.⁴² In addition, the Council has: invoked Chapters VII and VIII in calling upon States, acting nationally or through regional agencies or arrangements, to use such measures as might be necessary to ensure the strict implementation of the arms embargo;⁴³ strongly called upon all States to observe and improve the effectiveness of the embargo;⁴⁴ urged Member States with information about violations of the embargo to provide that information to the 751 Committee;⁴⁵ urged all

³⁸ S/RES/1425 (22 July 2002), operative paragraph 14.

³⁹ S/RES/1474 (8 April 2003), operative paragraphs 4-5.

⁴⁰ S/RES/1519 (16 December 2003), operative paragraphs 2 and 3.

⁴¹ See, e.g., S/RES/767 (27 July 1992), operative paragraph 10; S/RES/775 (28 August 1992), operative paragraph 12; S/RES/954 (4 November 1994), operative paragraph 12.

⁴² See, e.g., S/RES/814 (26 March 1993), operative paragraph 11; S/RES/886 (18 November 1993), operative paragraph 11; S/RES/897 (4 February 1994), operative paragraph 9; S/RES/923 (31 May 1994), operative paragraph 6; S/PRST/1995/15 (6 April 1995): *Presidential Statement of 6 April 1995*; S/PRST/1996/4 (24 January 1996): *Presidential Statement of 24 January 1996*; S/PRST/1997/8 (27 February 1997): *Presidential Statement of 27 February 1997*; S/PRST/1997/57 (23 December 1997): *Presidential Statement of 23 December 1997*; S/PRST/1999/16 (27 May 1999): *Presidential Statement of 27 May 1999*; S/PRST/2000/22 (29 June 2000): *Presidential Statement of 29 June 2000*; S/PRST/2001/1 (11 January 2001): *Presidential Statement of 11 January 2001*; S/RES/1356 (19 June 2001), operative paragraph 1; S/RES/1474 (8 April 2003), operative paragraph 1.

⁴³ S/RES/794 (3 December 1992), operative paragraph 16.

⁴⁴ S/PRST/1999/31 (12 November 1999): *Presidential Statement of 12 November 1999*.

⁴⁵ S/PRST/1999/31 (12 November 1999): *Presidential Statement of 12 November 1999*. The Council again urged or called upon States to report in such a manner to the 751 Committee in: S/PRST/2000/22 (29 June 2000): *Presidential Statement of 29 June 2000*; S/PRST/2001/1 (11 January 2001): *Presidential Statement of 11 January 2001*; S/PRST/2002/8 (28 March 2002): *Presidential Statement of 28 March 2002*; S/RES/1407 (3 May 2002), operative paragraph 9;

States to take all necessary steps to ensure full implementation and enforcement of the embargo;⁴⁶ called on all States to cooperate fully with the Chairman of the 751 Committee in a planned visit to Somalia and the region,⁴⁷ requested all States to report to the 751 Committee on measures they had taken to ensure the full implementation of the arms embargo;⁴⁸ and requested all States to cooperate fully with the Somalia Panel of Experts.⁴⁹ In April 2003 the Council addressed a request specifically to the States neighbouring Somalia, inviting them to report to the 751 Committee on a quarterly basis regarding their efforts to implement the embargo.⁵⁰

In December 2003 the Council: called on all States in the region to establish focal points to enhance cooperation with the Somalia Monitoring Group and to facilitate information exchange;⁵¹ called on neighbouring States to report to the 751 Committee quarterly on efforts to implement the arms embargo;⁵² and encouraged Member States from the region to continue their efforts in enacting legislation or regulations necessary to ensure the effective implementation of the arms embargo.⁵³

S/RES/1425 (22 July 2002), operative paragraph 7; S/RES/1474 (8 April 2003), operative paragraph 9.

⁴⁶ S/PRST/2000/22 (29 June 2000): *Presidential Statement of 29 June 2000*. The Council against urged States to take the necessary steps to ensure full implementation and enforcement of the embargo in: S/RES/1356 (19 June 2001), operative paragraph 1; S/PRST/2001/1 (11 January 2001): *Presidential Statement of 11 January 2001*.

⁴⁷ S/RES/1407 (3 May 2002), operative paragraph 4.

⁴⁸ S/RES/1407 (3 May 2002), operative paragraph 8.

⁴⁹ S/RES/1425 (22 July 2002), operative paragraph 6.

⁵⁰ S/RES/1474 (8 April 2003), operative paragraph 10.

⁵¹ S/RES/1519 (16 December 2003), operative paragraph 5.

⁵² S/RES/1519 (16 December 2003), operative paragraph 8.

⁵³ S/RES/1519 (16 December 2003), operative paragraph 10.

5.4.4 Regional organizations

In April 2003, the Council called upon regional organizations, and in particular the African Union (AU) and the League of Arab States (LAS), to assist the Somali parties and States in the region to implement the arms embargo fully.⁵⁴ In December 2003 the Council called on regional organizations, in particular the Intergovernmental Authority on Development (IGAD), the African Union (AU) and the League of Arab States (LAS), to establish focal points to enhance cooperation with the Somalia Monitoring Group and to facilitate information exchange.⁵⁵

5.4.5 The United Nations Operations in Somalia (UNOSOM and UNOSOM II)

In April 1992 the Council decided to establish a United Nations Operation in Somalia (UNOSOM), in order to facilitate an immediate cessation of hostilities and the maintenance of a cease-fire throughout Somalia and promote reconciliation and political settlement, as well as to provide urgent humanitarian assistance.⁵⁶ Although no specific role was bestowed upon UNOSOM in respect of the arms embargo, it nevertheless represented a United Nations presence on the ground that could monitor the extent to which the arms embargo was being observed. In December 1992 the Council determined that the magnitude of the human tragedy in Somalia, exacerbated by the obstacles preventing the distribution of humanitarian assistance, constituted a threat to international peace and security.⁵⁷ Acting under Chapter VII, it then authorized the Secretary-General and Member

⁵⁴ S/RES/1474 (8 April 2003), operative paragraph 11.

⁵⁵ S/RES/1519 (16 December 2003), operative paragraph 5.

⁵⁶ S/RES/751 (24 April 1992), operative paragraphs 2, 7. Six months later the number of personnel serving in UNOSOM was expanded in accordance with recommendations made by the Secretary-General: S/RES/775 (28 August 1992), operative paragraph 3.

⁵⁷ S/RES/794 (3 December 1992), preambular paragraph 3.

States cooperating with him to use all necessary means to establish a secure environment for humanitarian relief operations in Somalia.⁵⁸ As a result of that decision, two peace-enforcement operations were established – the United Task Force (UNITAF), led by the United States, and an expanded and strengthened United Nations Operation in Somalia (UNOSOM II).⁵⁹ As part of its broader mandate of establishing a secure environment for humanitarian relief operations, UNOSOM II was to engage in activities to bring about the disarmament, demobilization and reintegration into civil society of the Somali factions.⁶⁰ When the Council established UNOSOM II it also requested the Secretary-General to support from within Somalia the implementation of the arms embargo established by resolution 733 (1992), utilizing as available and appropriate the forces of UNOSOM II.⁶¹ Although the Secretary-General did not subsequently report exclusively or explicitly on the actions taken by UNOSOM II to implement the embargo, he nevertheless referred consistently to actions taken by the Operation to bring about the disarmament of the various factions within Somalia – activities which were undoubtedly linked to the overall objectives

⁵⁸ S/RES/794 (3 December 1992), operative paragraph 10.

⁵⁹ The Council established UNOSOM II in March 1993: S/RES/814 (26 March 1993), operative paragraphs 5, 6. For discussion relating to the establishment of UNITAF, see above.

⁶⁰ For the full mandate of UNOSOM II, see: S/25354 and Add. 1 and 2 (3, 11 and 22 March 1993): *Further report of the Secretary-General pursuant to paragraphs 18 and 19 of resolution 794 (1992) on the situation in Somalia*, paragraphs 56-88 [proposing a detailed mandate for UNOSOM II, which was subsequently endorsed by the Council in paragraph 5 of resolution 814 (1993)].

⁶¹ S/RES/814 (26 March 1993), operative paragraph 10.

of the arms embargo.⁶² Ultimately, however, the activities of UNOSOM II were unsuccessful and it was phased out, with its mandate terminating on 31 March 1995.⁶³

5.4.6 The Team and Panel of Experts on Somalia

In March 2002 the Security Council expressed its intention to establish a mechanism to generate independent information on violations of the arms embargo and to improve the embargo's enforcement.⁶⁴ In May 2002 the Council requested the Secretary-General to establish a team of two experts to prepare for the establishment of a Panel of Experts on the implementation of the Somalia arms embargo.⁶⁵ The preparatory team's mandate included the following: a) Investigating violations of the embargo; b) Detailing information on violations and the enforcement of the embargo; c) Undertaking field research in Somalia, States neighbouring Somalia and other States; d) Assessing the capacity of States in the region to implement the embargo fully; and e) Providing recommendations on practical steps for strengthening the enforcement of the embargo.⁶⁶ The preparatory team submitted its report in early July 2002.⁶⁷ In its report the team noted that there had been a common perception that the embargo had not been enforced effectively since it had been

⁶² See, e.g., S/26317 (17 August 1993): *Further report of the Secretary-General submitted in pursuance of paragraph 18 of resolution 814 (1993)*, paragraphs 14-18; S/26738 (12 November 1993): *Further report of the Secretary-General submitted in pursuance of paragraph 19 of resolution 814 (1993) and paragraph A 5 of resolution 865 (1993)*, paragraphs 38-40, 83-84.

⁶³ The Council authorized the final extension of UNOSOM II's mandate up to 31 March 1995 in resolution 954 (1994): S/RES/954 (4 November 1994), operative paragraph 1. In a presidential statement of 6 April 1995 the Security Council took note of the successful withdrawal of UNOSOM II. It stated that UNOSOM II had helped to save lives and mitigate suffering, but that ultimately the lack of cooperation from Somali parties over security issues had undermined UNOSOM II's objectives and prevented its continuation: S/PRST/1995/15 (6 April 1995): *Presidential statement of 6 April 1995*.

⁶⁴ S/PRST/2002/8 (28 March 2002): *Presidential statement of 28 March 2002*.

⁶⁵ S/RES/1407 (3 May 2002), operative paragraph 1.

⁶⁶ *Ibid.*

established.⁶⁸ It suggested that, in order to improve the enforcement of the embargo, the Council could take the following steps: a) Clarify the scope of the embargo, making it clear that the provision of financing and services that support military activities in Somalia were a violation of the embargo;⁶⁹ b) Enhance end-user verification;⁷⁰ c) establish a Panel of Experts in the region;⁷¹ and d) Promote transparency and accountability over financial institutions in Somalia.⁷²

In late-July 2002, shortly after the publication of the preparatory team's report, the Security Council requested the Secretary-General to establish a Panel of Experts on the Somalia embargo, consisting of three members, for a period of six months.⁷³ The Panel, which was to be based in Nairobi, was endowed with a mandate that was practically identical to that of the preparatory team.⁷⁴ In addition to performing the same tasks as the team of experts, the Panel was requested: a) To take into account the recommendations of the team of experts relating to its methodology;⁷⁵ b) To notify the Council, through the 751 Committee, of any lack of cooperation it experienced;⁷⁶ c) To brief the Chairman of the 751

⁶⁷ S/2002/722 (3 July 2002), annex: *Report of the team of experts appointed pursuant to Security Council resolution 1407 (2002), paragraph 1, concerning Somalia.*

⁶⁸ *Ibid*, paragraph 27.

⁶⁹ *Ibid*, paragraphs 63-68.

⁷⁰ *Ibid*, paragraphs 69-71.

⁷¹ *Ibid*, paragraphs 72-79.

⁷² *Ibid*, paragraphs 80-81.

⁷³ S/RES/1425 (22 July 2002), operative paragraph 3.

⁷⁴ For the Panel's basic mandate, see: *ibid*.

⁷⁵ S/RES/1425 (22 July 2002), operative paragraph 5.

⁷⁶ S/RES/1425 (22 July 2002), operative paragraph 9.

Committee prior to his scheduled mission to the region;⁷⁷ and d) To provide an oral briefing to the Council, through the Committee, in November 2002.⁷⁸

In April 2003 the Security Council decided to re-establish the Panel of Experts for a further period of six months.⁷⁹ In addition to the responsibilities already outlined, the Council bestowed the following tasks upon the Panel: a) Focussing on ongoing violations of the embargo, including transfers of ammunition, single use weapons and small arms; b) Identifying those who continued to violate the embargo inside and outside Somalia, as well as their active supporters, and to provide the 751 Committee with a draft list for possible future actions; c) Exploring the possibility of establishing a monitoring mechanism for the implementation of the embargo, with partners inside and outside Somalia, in cooperation with regional and international organizations, including the AU; d) Refining the recommendations provided in the Panel's first report;⁸⁰ and e) Providing a briefing, through the 751 Committee, to the Council on its work in the middle of its term and submitting a report, again through the Committee, at the end of its mandated period.⁸¹

The Panel of Experts on Somalia submitted two reports.⁸² In its first report, the Panel concluded that, as the arms embargo had been consistently violated since its

⁷⁷ S/RES/1425 (22 July 2002), operative paragraph 10.

⁷⁸ *Ibid.* The Panel provided such a briefing on 14 November 2002: see S/PRST/2002/35 (12 December 2002): *Presidential statement of 12 December 2002* [expressing the Council's appreciation for the Panel's oral briefing].

⁷⁹ S/RES/1474 (8 April 2003), operative paragraph 3. The Council requested the Secretary-General to appoint up to four experts in operative paragraph 4 of the same resolution. The Secretary-General circulated a letter on 30 April 2003 detailing the appointments made: see S/2003/515 (1 May 2003).

⁸⁰ S/RES/1474 (8 April 2003), operative paragraph 3.

⁸¹ S/RES/1474 (8 April 2003), operative paragraph 7.

⁸² S/2003/223 (25 March 2003), enclosure: *Report of the Panel of Experts on Somalia pursuant to Security Council resolution 1425 (2002)*; S/2003/1035 (4 November 2003), enclosure: *Report of the Panel of Experts on Somalia pursuant to Security Council resolution 1474 (2003)*.

imposition, it had no normative value and the Security Council and the 751 Committee should therefore send a clear signal that in future the embargo would be enforced vigorously and violators penalised.⁸³ The Panel also made a number of concrete recommendations, including that: a) A system should be created to prevent the forging and abuse of end-user certificates for arms sales;⁸⁴ b) The 751 Committee should draw up a list of individuals deemed to be in violation of the arms embargo, against whom financial sanctions might be implemented;⁸⁵ c) Targeted travel sanctions might be implemented against those individuals who had been violating the embargo and against whom financial sanctions either had not been effective or would be unlikely to be effective;⁸⁶ d) Where individuals who systematically violated the embargo were closely affiliated with political institutions, their representative privileges could be revoked;⁸⁷ and e) The Panel's mandate should be extended for six months in order to investigate further violations of the embargo and to organize a Somali-based effort to identify and impede embargo violators.⁸⁸

In its second and final report, the Panel noted that, although it had not detected any major shipments of weapons to the factions in Somalia over the previous six months, there had continued to be a “microflow” of arms into Somalia from neighbouring countries.⁸⁹ The situation in Somalia was complex, requiring a comprehensive and integrated approach to

⁸³ *Ibid*, paragraphs 172-175.

⁸⁴ *Ibid*, paragraph 187.

⁸⁵ *Ibid*, paragraph 188.

⁸⁶ *Ibid*, paragraph 189.

⁸⁷ *Ibid*, paragraph 190.

⁸⁸ *Ibid*, paragraph 191.

⁸⁹ S/2003/1035 (4 November 2003), enclosure: *Report of the Panel of Experts on Somalia pursuant to Security Council resolution 1474 (2003)*, paragraph 173.

monitoring the implementation of the arms embargo.⁹⁰ The Panel therefore recommended that a monitoring mechanism be established to improve the embargo's effectiveness.⁹¹ It also urged that improved cooperation was needed between international, regional and sub-regional organizations, as well as with Member States and non-State actors involved in disarmament, demobilization, ceasefire monitoring and anti-criminal and counter-terrorism activities, in order to ensure the effective enforcement of sanctions.⁹² It further recommended that a list be compiled of individuals or groups engaged in sanctions violators and that Member States should ensure that their nationals and residents convicted of sanctions violations be held accountable.⁹³

5.4.7 The Somalia Monitoring Group

In December 2003, the Council requested the Secretary-General to establish a Monitoring Group connected with the Somalia sanctions régime for a period of 6 months.⁹⁴ The Somalia Monitoring Group's mandate included: (a) investigating violations of the arms embargo;⁹⁵ (b) making recommendations for strengthening the implementation of the arms embargo;⁹⁶ (c) carrying out field investigations in Somalia, neighbouring States and other appropriate States;⁹⁷ (d) assessing progress made by States in the region in implementing the arms embargo, including through a review of national customs and border control régimes;⁹⁸

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, paragraph 174.

⁹² *Ibid.*, paragraph 176

⁹³ *Ibid.*, paragraph 190.

⁹⁴ S/RES/1519 (16 December 2003), operative paragraph 2.

⁹⁵ S/RES/1519 (16 December 2003), operative paragraph 2(a).

⁹⁶ S/RES/1519 (16 December 2003), operative paragraph 2(b).

⁹⁷ S/RES/1519 (16 December 2003), operative paragraph 2(c).

⁹⁸ S/RES/1519 (16 December 2003), operative paragraph 2(d).

(e) reporting with a draft list of those who continued to violate the arms embargo inside and outside Somalia, for possible future measures by the Council;⁹⁹ and (f) making recommendations based on its investigations and the previous reports of the Somalia Panel of Experts.¹⁰⁰ The Somalia Monitoring Group was due to report in July 2004.

5.5 Notable aspects of the Somalia sanctions régime

The Somalia sanctions régime is notable mostly for the fact that it appears to have had little or no effect upon the situation in Somalia. Until recently, it was also one of the more neglected of the United Nations sanctions régimes. As mentioned above, the Committee had met on average less than twice a year in its first decade. On a more positive note, the régime has given rise to the first example of the Council establishing a preliminary team of experts to pave the way for a Panel of Experts. In establishing the team and subsequent Panel of Experts on the Somalia arms embargo, the Council therefore appears to have drawn lessons from its experiences with Panels of Experts established in relation to other sanctions régimes, such as the Angola (UNITA) régime, the Afghanistan/Taliban/Al Qaeda régime and the 1343 Liberia régime.

⁹⁹ S/RES/1519 (16 December 2003), operative paragraph 2(e).

¹⁰⁰ S/RES/1519 (16 December 2003), operative paragraph 2(f).

6. *The Libya sanctions régime*

The Council applied sanctions against Libya in March 1992, as part of an attempt to bring to justice those allegedly responsible for the bombings of the American airline Pan Am's flight 103, over Lockerbie, Scotland, and of the French Airline UTA's flight 772, over Niger.¹ The governments of the UK and the US had been investigating the fate of Pan Am flight 103 and the French government had been investigating the fate of UTA flight 772, and their investigations had led them to suspect that Libyan citizens had been involved in the bombings.² The Libya sanctions régime initially consisted of an arms embargo and aviation, travel and diplomatic sanctions. The sanctions were expanded in November 1993, to incorporate financial and aviation sanctions, as well as sanctions against particular items used in the refinement and export of oil. The sanctions were suspended in April 1999, after the Secretary-General had reported that the two Libyan nationals suspected of having been involved in the Lockerbie bombing had been transferred to the Netherlands, where they were to stand trial before a Scottish Court. They were eventually terminated in September 2003, after the Libyan Government sent a letter to the President of the Security Council recounting the steps taken to comply with its obligations under the relevant resolutions.

¹ Pan Am flight 103 was destroyed above Lockerbie in Scotland in December 1988, resulting in 270 deaths. UTA flight 772 was destroyed on 19 September 1989, resulting in 171 deaths. For further details relating to these events, see: S/1999/726 (30 June 1999): *Report of the Secretary-General Submitted Pursuant to Paragraph 16 of Security Council Resolution 883 (1993) and Paragraph 8 of Resolution 1192 (1998)*, paragraphs 15, 16.

² See, e.g., S/23306 (31 December 1991), annex [containing a communiqué from the Presidency of the French Republic and the Ministry of Foreign Affairs, stating that the judicial enquiry conducted into the attack on flight UTA 772 placed "heavy presumptions of guilt" on Libyan nationals] and S/23308 (31 December 1991), annex [containing a Statement issued by the United States Government and a Joint Declaration of the United States and the United Kingdom, demanding that the Libyan Government surrender for trial those charged with the bombing of Pan Am 103 and pay appropriate compensation].

6.1 The constitutional basis for imposing sanctions against Libya

In January 1992 the Council adopted resolution 731, in which it characterised acts of terrorism as a threat to international peace and security,³ expressed deep concern that investigations into the Pan Am and UTA bombings had implicated officials of the Libyan government,⁴ deplored the fact that the Libyan government had not yet cooperated with attempts to establish responsibility for the bombings,⁵ and urged the Libyan government to cooperate with international investigations.⁶ Four months later, after Libya had failed to respond to the requests of resolution 731, the Council imposed sanctions.

The Council imposed sanctions on March 31 1992, in resolution 748 (1992).⁷ In that resolution the Council stated that the suppression of acts of terrorism was “essential for the maintenance of international peace and security.”⁸ The Council also reaffirmed that, in accordance with Article 2(4) of the Charter of the United Nations, every State had the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when such acts involved a threat or use of force.⁹ The Council then determined that the Libyan Government’s failure to demonstrate by concrete steps its renunciation of terrorism and its failure to respond fully and effectively to the requests of

³ S/RES/731 (21 January 1992), preambular paragraph 2. This characterisation was implicit in the statement of the Council affirming “the right of all States ... to protect their nationals from acts of international terrorism that constitute threats to international peace and security.”

⁴ S/RES/731 (21 January 1992), preambular paragraph 6.

⁵ S/RES/731 (21 January 1992), operative paragraph 2.

⁶ S/RES/731 (21 January 1992), operative paragraph 3.

⁷ S/RES/748 (31 March 1992), operative paragraphs 3-6.

⁸ S/RES/748 (31 March 1992), preambular paragraph 4.

⁹ S/RES/748 (31 March 1992), preambular paragraph 6.

resolution 731 (1992) constituted a threat to international peace and security,¹⁰ and invoked Chapter VII of the Charter,¹¹ before applying sanctions.¹² In November 1993, when the Council strengthened the sanctions, it determined that the Libyan Government's continued failure to demonstrate by concrete steps its renunciation of terrorism and to respond fully and effectively to the requests of resolution 731 (1992), constituted a threat to international peace and security,¹³ and it again invoked Chapter VII of the Charter.¹⁴

6.2 The objective of the Libya sanctions régime

The objectives of the Libya sanctions régime were to ensure that the Libyan Government: (a) Cooperated with investigations into the bombings of the French, British and American governments;¹⁵ and (b) Committed itself definitively to ceasing all forms of terrorism and all assistance to terrorist groups and to demonstrating by concrete actions its renunciation of terrorism.¹⁶ The Security Council made it clear that the sanctions would terminate once it was satisfied that the Libyan Government had complied with those aims.¹⁷ In November 1993 the Security Council reaffirmed those objectives, whilst providing for the possibility that the sanctions might be suspended if the Secretary-General were to report to it that the Libyan Government had ensured the appearance of those charged with the bombing of Pan Am flight 103 before the appropriate United Kingdom or United States

¹⁰ S/RES/748 (31 March 1992), preambular paragraph 7.

¹¹ S/RES/748 (31 March 1992), preambular paragraph 10.

¹² The sanctions were outlined in: S/RES/748 (31 March 1992), operative paragraphs 3-6.

¹³ See, e.g., S/RES/883 (11 November 1993), preambular paragraph 6 [characterising the threat to international peace and security in the same manner as preambular paragraph 7 of resolution 748 (1992)].

¹⁴ See, e.g., S/RES/883 (11 November 1993), preambular paragraph 10.

¹⁵ S/RES/748 (31 March 1992), operative paragraph 1.

¹⁶ S/RES/748 (31 March 1992), operative paragraph 2.

¹⁷ S/RES/748 (31 March 1992), operative paragraph 3.

court and had satisfied that French judicial authorities with respect to the bombing of UTA flight 772.¹⁸

In August 1998, after negotiations had led to the proposal that two individuals suspected of having been involved in the bombing of Pan Am flight 103 be tried before a Scottish court sitting in the Netherlands,¹⁹ the Council decided that the sanctions would be suspended immediately if the Secretary-General were to report to it that the suspects had arrived in the Netherlands for the purpose of being tried before the Scottish Court, or if they had appeared for trial before an appropriate court in the United Kingdom or the United States.²⁰

6.3 The scope of the Libya sanctions régime

The sanctions regime initially consisted of a range of measures, including diplomatic sanctions, an arms embargo, aviation sanctions, and travel sanctions targeting the movement of Libyan nationals suspected of having been involved in terrorist activities. On the diplomatic front, the Council required all States to significantly reduce the number and level of staff at Libyan diplomatic missions and consulates and to restrict or control the movement of staff who remained within their territory.²¹ The arms embargo required States to prevent the provision to Libya by their nationals and from their territories of: arms and related

¹⁸ S/RES/883 (11 November 1993), operative paragraph 16.

¹⁹ See: S/1998/795 (24 August 1998): *Letter dated 24 August 1998 from the Representatives of the United Kingdom and the United States addressed to the Secretary-General*.

²⁰ S/RES/1192 (27 August 1998), operative paragraph 8.

²¹ S/RES/748 (31 March 1992), operative paragraph 6(a). These diplomatic sanctions were reaffirmed in S/RES/883 (11 November 1993), operative paragraph 7, which also clarified that the diplomatic sanctions were to apply to missions and consulates established subsequent to resolution 748.

matériel;²² and technical advice, assistance or training related to the provision, manufacture, maintenance or use of arms and related *matériel*.²³ The Council further required States to withdraw any officials or agents present in Libya to advise the Libyan authorities on military matters.²⁴ The Council imposed an extensive range of measures targeting air travel to and from Libya. These measures required States: to deny permission to any aircraft to take off from, land in, or overfly their territory if it was destined to land in or had taken off from the territory of Libya;²⁵ to prohibit the supply by their nationals or from their territories of any aircraft or aircraft components to Libya, and the provision of aircraft engineering or servicing of, or airworthiness certification or aircraft insurance to, Libyan aircraft;²⁶ and to prevent the operation of all Libyan Arab Airlines offices.²⁷ The travel sanctions against Libyan terrorists required States to take steps to deny entry to or expel Libyan nationals who had been denied entry to or expelled from other States because of their involvement in terrorist activities.²⁸

In November 1993, the Council tightened the sanctions, imposing financial sanctions, prohibiting the export to Libya of particular goods used in the refinement and export of oil, and strengthening the measures aimed at air travel.²⁹ The financial sanctions required States in which there were funds or other financial resources owned or controlled

²² S/RES/748 (31 March 1992), operative paragraph 5(a).

²³ S/RES/748 (31 March 1992), operative paragraph 5(b).

²⁴ S/RES/748 (31 March 1992), operative paragraph 5(c).

²⁵ S/RES/748 (31 March 1992), operative paragraph 4(a). The Council did provide, however, for the possibility that exemptions might be granted to this prohibition where a particular flight had been approved on grounds of significant humanitarian need by the sanctions committee: *ibid*.

²⁶ S/RES/748 (31 March 1992), operative paragraph 4(b).

²⁷ S/RES/748 (31 March 1992), operative paragraph 6(b).

²⁸ S/RES/748 (31 March 1992), operative paragraph 6(c).

²⁹ S/RES/883 (11 November 1993), operative paragraphs 3-7.

by the Government or public authorities of Libya or any Libyan undertaking,³⁰ to freeze those funds and resources and to ensure that neither they nor any other funds and financial resources were made available by their nationals or by any persons within their territory to or for the benefit of the Government or public authorities of Libya or any Libyan undertaking.³¹ The prohibition upon particular goods used in the refinement and export of oil required States to prevent the export to Libya of goods such as pumps, boilers, furnaces, and prepared catalysts.³² The strengthened air sanctions required States: to ensure the immediate closure of all Libyan Arab Airlines offices within their territories;³³ to prohibit any commercial transactions with Libyan Arab Airlines by their nationals or from their territory, including the honouring or endorsement of any tickets or other documents issued by that airline;³⁴ to prohibit, by their nationals or from their territory of the provision for operation within Libya of any aircraft, aircraft components, or engineering or servicing of aircraft and aircraft components;³⁵ to prohibit by their nationals and from their territory the supply of any materials destined for the construction, improvement or maintenance of Libyan airfields, or

³⁰ The Council defines a Libyan undertaking as any commercial, industrial or public utility undertaking which is owned or controlled, directly or indirectly, by: (i) the Government or public authorities of Libya; (ii) any entity, wherever located or organized, owned or controlled by the Government or public authorities of Libya; and (iii) any agent of (i) or (ii): S/RES/883 (11 November 1993), operative paragraph 3.

³¹ S/RES/883 (11 November 1993), operative paragraph 3. The Council provided for exemptions from these financial sanctions, however, when the funds or other financial resources were derived from the sale or supply of any petroleum or petroleum products, including natural gas and natural gas products, or agricultural products or commodities, originating in Libya: S/RES/883 (11 November 1993), operative paragraph 4.

³² S/RES/883 (11 November 1993), operative paragraph 5. For a full list of the items see the annex attached to resolution 883: S/RES/883 (11 November 1993), annex.

³³ S/RES/883 (11 November 1993), operative paragraph 6(a).

³⁴ S/RES/883 (11 November 1993), operative paragraph 6(b).

³⁵ S/RES/883 (11 November 1993), operative paragraph 6(c).

of engineering or other services for the maintenance of Libyan airfields;³⁶ to prohibit, by their nationals or from their territory, any provision of advice, assistance, or training to Libyan pilots, flight engineers, or aircraft and ground maintenance personnel associated with the operation of aircraft and airfields within Libya;³⁷ and to prohibit, by their nationals or from their territory, any renewal of any direct insurance for Libyan aircraft.³⁸ The Council also introduced a couple of exemptions to the air sanctions, in order to permit U.N. aircraft to fly to Libya to carry a reconnaissance team exploring the option of the deployment of a team of U.N. observers to monitor the withdrawal of Libya from the Aouzou strip,³⁹ and then to carry the observer group subsequently established for that purpose.⁴⁰

6.4 The administration, monitoring and enforcement of the Libya sanctions régime

As with its other sanctions régimes, the Security Council bestowed responsibilities for the administration, implementation and enforcement of the sanctions against Libya upon a range of actors, including a Sanctions Committee, the Secretary-General and States.

6.4.1 The Libya Sanctions Committee

The Council established a Sanctions Committee in March 1992, in the same resolution by which it initiated the Libya sanctions régime.⁴¹ The Committee (“the Libya

³⁶ S/RES/883 (11 November 1993), operative paragraph 6(d). The Council provided an exemption to this prohibition for emergency equipment and equipment and services directly related to civilian air traffic control: *ibid.*

³⁷ S/RES/883 (11 November 1993), operative paragraph 6(e).

³⁸ S/RES/883 (11 November 1993), operative paragraph 6(f).

³⁹ S/RES/910 (14 April 1994), operative paragraph 1.

⁴⁰ S/RES/915 (4 May 1994), operative paragraph 4. The observer group, the United Nations Aouzou Strip Observer Group (UNASOG), was established in operative paragraph 2 of the same resolution.

⁴¹ S/RES/748 (31 March 1992), operative paragraph 9.

Sanctions Committee” or “the 748 Committee”), which was established in accordance with rule 28 of the Security Council’s provisional rules of procedure, was to report to the Council on its work and with its observations and recommendations and to undertake the following tasks: (a) Examining the reports of States on the measures they have taken to implement the sanctions;⁴² (b) Seeking further information from all States regarding action taken to implement the sanctions;⁴³ (c) Considering any information brought to its attention by States concerning violations of the sanctions and making recommendations to the Council on ways to increase their effectiveness;⁴⁴ (d) Recommending appropriate measures in response to the violations of sanctions;⁴⁵ (e) Providing information on a regular basis to the Secretary-General for general distribution to Member States;⁴⁶ (f) Considering and deciding expeditiously upon any application by States for the approval of flights on grounds of significant humanitarian need;⁴⁷ and (g) Giving special attention to any communications in accordance with Article 50 from any state with special economic problems that might arise from the carrying out of the sanctions against Libya.⁴⁸

In November 1993 the Council added to the committee’s responsibilities, requiring it to undertake the following additional tasks: (h) Modifying the guidelines for the implementation of the sanctions to reflect the additional measures imposed at that time;⁴⁹ and (i) Examining requests for assistance under Article 50 and make recommendations to the

⁴² S/RES/748 (31 March 1992), operative paragraph 9(a).

⁴³ S/RES/748 (31 March 1992), operative paragraph 9(b).

⁴⁴ S/RES/748 (31 March 1992), operative paragraph 9(c).

⁴⁵ S/RES/748 (31 March 1992), operative paragraph 9(d).

⁴⁶ *Ibid.*

⁴⁷ S/RES/748 (31 March 1992), operative paragraph 9(e).

⁴⁸ S/RES/748 (31 March 1992), operative paragraph 9(f).

President of the Security Council for appropriate action.⁵⁰ In April 1996, the Council requested the 748 Committee to draw to the attention of Member States their obligations under the sanctions régime in the event that Libyan-registered aircraft were to land in their territory.⁵¹ In January 1997, the Council requested the 748 Committee to follow up reports that a Libyan-registered aircraft had flown from Tripoli to Accra, in apparent violation of the sanctions.⁵² In May 1997, the Council again requested the 748 Committee to follow up reports that a Libyan-registered aircraft had violated the sanctions, on that occasion flying from Libya to Niger, before returning to Libya from Nigeria.⁵³

The 748 Committee was eventually dissolved in September 2003, when the sanctions were terminated, although it had not been active since the suspension of the sanctions in 1999.⁵⁴ During its tenure, the Libya Sanctions Committee issued four annual reports.⁵⁵ In its reports, the 748 Committee, like other Sanctions Committees, noted that the

⁴⁹ S/RES/883 (11 November 1993), operative paragraph 9. For the details relating to the additional measures, see section 6.3, above.

⁵⁰ S/RES/883 (11 November 1993), operative paragraph 10.

⁵¹ S/PRST/1996/18 (18 April 1996): *Presidential statement of 18 April 1996*. A year later the Council reiterated that it had made that request of the 748 Committee: S/PRST/1997/18 (4 April 1997): *Presidential statement of 4 April 1997*.

⁵² S/PRST/1997/2 (29 January 1997): *Presidential statement of 17 January 1997*.

⁵³ S/PRST/1997/27 (20 May 1997): *Presidential statement of 20 May 1997*.

⁵⁴ The Committee was dissolved by: S/RES/1506 (12 September 2003), operative paragraph 2. It held its 91st and last meeting in 1999: *Index to Proceedings of the Security Council for 1999* (2000) United Nations, New York, p. xiii.

⁵⁵ As with the annual reports of other Sanctions Committees, the annual reports of the 748 Committee have been circulated as official Security Council documents, in the form of an annex to a letter from the Chairman of the 748 Committee addressed to the President of the Security Council. The official document numbers and dates of circulation for the letters to which the reports are annexed are as follows: S/1996/2 (2 January 1996), annex: *Report of the Security Council Committee established pursuant to resolution 748 (1992) concerning the Libyan Arab Jamahiriya*, (hereafter "*First report of the 748 Committee*") [outlining the activities of the Committee from its establishment until the end of 1995]; S/1996/1079 (31 December 1996), annex: *Report of the 748 Committee for 1996*; S/1997/1030 (31 December 1997), annex: *Report of the 748 Committee for 1997*; S/1998/1237 (31 December 1998), annex: *Report of the 748 Committee for 1998*; S/1999/1299 (31 December 1999), annex: *Report of the 748 Committee for 1999*. The 748 Committee issued no annual reports for 2000, 2001 or 2002.

full responsibility for the implementation of the sanctions rested upon States.⁵⁶ It also outlined some of the exemptions which it had provided from the air sanctions, including for medical evacuation purposes and for flights carrying people undertaking the Hajj pilgrimage.⁵⁷ Finally, the Committee also made reference in its reports to alleged and reported violations of the sanctions.⁵⁸ The Security Council also referred to some of these violations, which were almost exclusively related to the air sanctions,⁵⁹ in a number of presidential statements.⁶⁰

6.4.2 The Secretary-General

When the Security Council established the sanctions régime against Libya, it invited the Secretary-General to continue his role of seeking the cooperation of the Libyan Government.⁶¹ The Secretary-General was also requested: to receive reports submitted by

⁵⁶ See, e.g., *First report of the 748 Committee*, above note 55, paragraph 6.

⁵⁷ See, e.g., *First report of the 748 Committee*, above note 55, paragraphs 21-30; *Report of the 748 Committee for 1996*, above note 55, paragraphs 5-9; *Report of the 748 Committee for 1997*, above note 55, paragraphs 3-7; *Report of the 748 Committee for 1998*, above note 55, paragraphs 3-7; *Report of the 748 Committee for 1999*, above note 55, paragraphs 3-6.

⁵⁸ See, e.g., *First report of the 748 Committee*, above note 55, paragraphs 31-32; *Report of the 748 Committee for 1996*, above note 55, paragraphs 10-14; *Report of the 748 Committee for 1997*, above note 55, paragraphs 8-10; *Report of the 748 Committee for 1998*, above note 55, paragraphs 8-14; *Report of the 748 Committee for 1999*, above note 55, paragraph 7.

⁵⁹ See, e.g., *First report of the 748 Committee*, above note 55, paragraphs 31-32; *Report of the 748 Committee for 1996*, above note 55, paragraphs 10-14; *Report of the 748 Committee for 1997*, above note 55, paragraphs 8-10; *Report of the 748 Committee for 1998*, above note 55, paragraphs 8-14; *Report of the 748 Committee for 1999*, above note 55, paragraph 7. In its report for 1998 the Committee noted, in accordance with operative paragraph 3 of resolution 1196 (1998), that it did not have any information to report on the implementation, strengthening and violations of the arms embargo component of the sanctions régime against Libya: *Report of the 748 Committee for 1998*, above note 55, paragraph 16.

⁶⁰ S/PRST/1996/18: *Presidential Statement of 18 April 1996*; S/PRST/1997/2: *Presidential Statement of 29 January 1997*; S/PRST/1997/18: *Presidential Statement of 4 April 1997*; S/PRST/1997/27: *Presidential Statement of 20 May 1997*.

⁶¹ S/RES/748 (31 March 1992), operative paragraph 12. The Council had requested that the Secretary-General play such a role two months earlier, when it had first urged Libya to cooperate with investigations into the bombings of Pan Am flight 103 and UTA flight 772: S/RES/731 (21 January 1992), operative paragraph 4.

States on measures taken to implement the sanctions;⁶² and to provide all necessary assistance to the 748 Committee and to make the necessary arrangements in the Secretariat for that purpose.⁶³ In subsequent decisions the Council again invited the Secretary-General to continue his role of seeking the cooperation of the Libyan Government,⁶⁴ and implicitly requested him to receive the reports submitted by States on steps taken to implement the sanctions.⁶⁵

In November 1993, the Council requested the Secretary-General to play a reporting role in relation to the possible scenario according to which the sanctions might be suspended and terminated if the Libyan Government were to comply with the objectives of the sanctions régime. The Council thus requested the Secretary-General: (a) To report to it in the event that Libya had ensured the appearance of those charged with the bombing of Pan Am flight 103 before the appropriate United Kingdom or United States court and had satisfied that French judicial authorities with respect to the bombing of UTA flight 772, in which case the sanctions would be suspended;⁶⁶ and (b) In the event that sanctions were suspended following that initial report, to report to the Council again within ninety days on Libya's compliance with the remaining objectives of the sanctions régime. In the event of non-compliance, the suspension of the sanctions would be terminated.⁶⁷

⁶² S/RES/748 (31 March 1992), operative paragraph 8. The Secretary-General accordingly issued the following reports: S/23992 (22 May 1992) & Add.1 (8 June 1992) & Add.2 (19 August 1992); S/1996/611 (31 July 1996).

⁶³ S/RES/748 (31 March 1992), operative paragraph 11.

⁶⁴ S/RES/883 (11 November 1993), operative paragraph 14.

⁶⁵ S/RES/883 (11 November 1993), operative paragraph 13. The Secretary-General accordingly issued the following reports: S/1994/99 (28 January 1994) & Add.1 (8 March 1994) & Add.2 (24 May 1994); S/1996/612 (31 July 1996).

⁶⁶ S/RES/883 (11 November 1993), operative paragraph 16.

⁶⁷ *Ibid.*

In August 1998, the Council requested the Secretary-General to assist the Libyan Government with the physical arrangements for the safe transfer of the two accused from Libya to the Netherlands.⁶⁸ At the same time, the Council also invited the Secretary-General to nominate international observers to attend the trial,⁶⁹ and reaffirmed its earlier reporting requests of the Secretary-General, providing for the possibility that the sanctions might be suspended upon a report from the Secretary-General that the suspects had arrived in the Netherlands for trial before a Scottish court.⁷⁰

6.4.3 States

The Security Council called upon States to take a number of actions in relation to the administration and implementation of the Libya sanctions régime. The Council thus: called upon all States, including States not members of the U.N., to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations;⁷¹ requested all States to report to the Secretary-General on measures taken to implement the sanctions;⁷² called upon States to cooperate fully with the 748 Committee, including supplying such information as it may seek;⁷³ and called upon Member States to encourage the Libyan Government to respond fully to the requests and decisions in connection with which the sanctions were imposed.⁷⁴

⁶⁸ S/RES/1192 (27 August 1998), operative paragraph 5.

⁶⁹ S/RES/1192 (27 August 1998), operative paragraph 6.

⁷⁰ S/RES/1192 (27 August 1998), operative paragraph 8.

⁷¹ S/RES/748 (31 March 1992), operative paragraph 7; S/RES/883 (11 November 1993), operative paragraph 12.

⁷² S/RES/748 (31 March 1992), operative paragraph 8; S/RES/883 (11 November 1993), operative paragraph 13.

⁷³ S/RES/748 (31 March 1992), operative paragraph 10.

⁷⁴ S/RES/883 (11 November 1993), operative paragraph 15.

In August 1998, when the Security Council welcomed the initiative for the trial of two persons charged with the bombing of Pan Am flight 103 before a Scottish court sitting in the Netherlands, it made a number of requests of States. It called upon the Governments of the Netherlands and the United Kingdom to take the necessary steps to implement the initiative,⁷⁵ required all States to cooperate to that end,⁷⁶ required Libya to ensure the appearance of the two accused and to ensure that any evidence or witnesses were made available at the court,⁷⁷ and required the Netherlands, upon the arrival of the two accused, to detain them pending their transfer for the purpose of the trial.⁷⁸

6.5 Suspension and termination of the Libya sanctions régime

The Security Council first provided for the possibility that the sanctions against Libya might be suspended in November 1993, when it made such suspension conditional upon the appearance of those charged with the bombing of Pan Am 103 before an appropriate UK or US court and upon the French judicial authorities being satisfied with steps taken by the Libyan Government to implement the sentences of those found guilty *in absentia* of the bombing of UTA 772.⁷⁹ The Council subsequently modified the conditions for suspension of the sanctions so that they would be suspended once the Secretary-General reported to the Council that the two accused of the bombing of Pan Am 103 had arrived in the Netherlands for the purpose of being tried before a Scottish court and that the Libyan Government had

⁷⁵ S/RES/1192 (27 August 1998), operative paragraph 3.

⁷⁶ S/RES/1192 (27 August 1998), operative paragraph 4.

⁷⁷ S/RES/1192 (27 August 1998), operative paragraph 4.

⁷⁸ S/RES/1192 (27 August 1998), operative paragraph 7.

⁷⁹ S/RES/883 (11 November 1993), operative paragraph 16.

satisfied the French judicial authorities with regard to the bombing of UTA 772.⁸⁰ The sanctions were in fact suspended on April 5 1999, after the Secretary-General reported that the conditions for suspension had been satisfied.⁸¹

The ultimate termination of the sanctions was complicated by the question of whether Libya had fully complied with demands of the Council constituting the objectives of the sanctions régime. In June 1999 the Secretary-General submitted a report to the Council, as requested by resolutions 883 (1993) and 1192 (1998), on whether Libya had complied with the remaining objectives of the sanctions régime, in which he suggested that the Libyan Government had largely demonstrated compliance with the remaining objectives of the sanctions.⁸² More than four years later, in September 2003, the Security Council welcomed a letter from the representative of Libya which recounted steps taken by the Libyan Government to comply with its obligations connected with the sanctions régime.⁸³ Those steps included accepting responsibility for the actions of Libyan officials, paying appropriate compensation, renouncing terrorism, and making a commitment to cooperate with further

⁸⁰ S/RES/1192 (27 August 1998), operative paragraph 8.

⁸¹ The Secretary-General reported this event to the Council via a letter to the President: S/1999/378 (5 April 1999): *Letter Dated 5 April from the Secretary-General Addressed to the President of the Security Council*. The Security Council immediately suspended the sanctions, as noted by both a statement of the President of the Security Council to the press dated 5 April 1999 (SC/6662) and by a presidential statement of 8 April 1999: S/PRST/1998/10 (8 April 1999) *Presidential Statement of 8 April 1999*.

⁸² S/1999/726 (30 June 1999): *Report of the Secretary-General Submitted Pursuant to Paragraph 16 of Security Council Resolution 883 (1993) and Paragraph 8 of Resolution 1192 (1998)*, Section IV, paragraphs 18-36.

⁸³ S/RES/1506 (12 September 2003), preambular paragraph 3. For the text of the letter itself, see: S/2003/818 (15 August 2003): *Letter dated 15 August 2003 from the representative of the Libyan Arab Jamahiriya addressed to the President of the Security Council*.

investigations. The Council proceeded to lift the sanctions,⁸⁴ and to dissolve the 748 Committee.⁸⁵

6.6 Notable aspects of the Libya sanctions régime

The Libyan sanctions régime contributed to the evolution of sanctions practice in a number of ways. First, it represented the first occasion on which the Security Council had imposed sanctions in connection with an act of terrorism.⁸⁶ Second, it was the first sanctions régime to consist of more than a simple arms embargo and less than comprehensive sanctions.⁸⁷ Third, it gave rise to the first instance of sanctioning in which the application of the sanctions was not immediate, meaning that the sanctions would enter into force after a short delay.⁸⁸ Fourth, the Council made a rare reference to Article 2(4) of the United Nations Charter,⁸⁹ and a less than common reference to Article 50, recalling the right of States to consult the Security Council where they were confronted with special economic

⁸⁴ S/RES/1506 (12 September 2003), operative paragraph 1.

⁸⁵ S/RES/1506 (12 September 2003), operative paragraph 2.

⁸⁶ As noted in section 6.1, above, in the process of imposing and modifying the Libya sanctions régime the Council expressed conviction that the suppression of acts of international terrorism was essential for the maintenance of international peace and security [see, e.g., S/RES/731 (21 January 1992), preambular paragraph 2; S/RES/748 (31 March 1992), preambular paragraph 4; S/RES/883 (11 November 1993), preambular paragraph 5] and characterized as a threat to international peace and security the Libyan Government's failure to renounce terrorism and to take steps to bring those suspected of having committed terrorist acts [see, e.g., S/RES/748 (31 March 1992), preambular paragraph 7; S/RES/883 (11 November 1993), preambular paragraph 6].

⁸⁷ Although the sanctions régime against Southern Rhodesia began its existence as a targeted sanctions régime, it was soon expanded to a comprehensive régime.

⁸⁸ See, e.g., S/RES/748 (31 March 1992), operative paragraph 3 [providing that the sanctions would enter into force on 15 April 1992]; S/RES/883 (11 November 1993), operative paragraph 2 [providing that the additional sanctions would enter into force on 1 December 1993]. In the first of these instances, the Council did not explicitly provide that the sanctions would not come into force if Libya were to comply with the objectives of the sanctions régime before the date stipulated. In the second instance, however, it provided for the possibility that the additional sanctions might not enter into force if the Secretary-General were to report before the date of entry into force that Libya had complied with the requirements of the sanctions régime: see S/RES/883 (11 November 1993), operative paragraphs 2, 16.

⁸⁹ S/RES/748 (31 March 1992), preambular paragraph 6.

problems arising from the carrying out of preventive or enforcement measures.⁹⁰ Fourth, the Council adopted the strategy of inducing compliance by articulating particular objectives, the realisation of which would result in the sanctions being suspended and terminated.⁹¹ Finally, the Libya sanctions régime possesses the dubious honour of being the sanctions régime which has been suspended for the longest period.⁹²

In political terms, it is noteworthy that the resolutions applying or modifying the sanctions against Libya received less than unanimous support.⁹³ Whilst that fact did not affect the legal consequences flowing from the application of the Libya sanctions, given that the relevant resolutions received the necessary support to be adopted, it nevertheless demonstrated that the decisions related to the application of sanctions against Libya did not attract the same degree of support as most other sanctions régimes. In legal terms the Libya sanctions régime was also notable because the events in response to which the sanctions were applied gave rise to international legal action, with the Libyan Government bringing a case before the International Court of Justice alleging that the US and UK's demand that it extradite terrorist suspects violated its rights under the 1971 Montreal Convention on Air

⁹⁰ S/RES/748 (31 March 1992), preambular paragraph 9; S/RES/883 (11 November 1993), preambular paragraph 9.

⁹¹ S/RES/883 (11 November 1993), operative paragraph 16 [expressing readiness to suspend the sanctions if the Secretary-General were to report that the Libyan Government had ensured the appearance of the Lockerbie suspects before the appropriate UK or US court and had satisfied the French authorities with respect to the bombing of flight UTA 772, and to terminate the sanctions when the Secretary-General reported that Libya had complied with its remaining obligations under the sanctions régime].

⁹² As noted in section 6.5, above, the Libya sanctions régime remains in a potentially permanent state of suspended animation.

⁹³ Resolution 748 (1992), initiating the sanctions régime, received ten votes in favour, none against and five abstentions. The Member States abstaining included Cape Verde, China, India, Morocco and Zimbabwe: see S/PV.3063, p. 65. Resolution 883 (1993), strengthening the sanctions, received eleven votes in favour, none against and four abstentions. The Member States abstaining included China, Djibouti, Morocco and Pakistan: S/PV.3312, p. 39. Resolution 1192 (1998), providing for the suspension of the sanctions in the event that the Secretary-

Safety,⁹⁴ and with the ultimate trial of two Lockerbie suspects before a Scottish Court temporarily located in the Hague.⁹⁵

General reports that the suspects had arrived in the Netherlands for trial by a Scottish Court, was adopted unanimously, however: S/PV.3920, pp. 13-14.

⁹⁴ See: *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie* (Libyan Arab Jamahiriya v. US/Libyan Arab Jamahiriya v. UK). Provisional Measures, I.C.J. Rep. 1992 (orders of 14 Apr. 1992). For further discussion of this case and of the question of judicial review of the decisions of the Security Council, see: Gowlland-Debbas, Vera, 'The Relationship Between the International Court of Justice and the Security Council in Light of the *Lockerbie* Case' (1994) 88 AJIL 643-77; Alvarez, Jose E., 'Judging the Security Council' (1996) 90 AJIL 1-39.

⁹⁵ For the Opinion of the Scottish Court in that case, see: S/2001/1994 (31 January 2001), annex.

7. *The sanctions régime against the Federal Republic of Yugoslavia (Serbia and Montenegro)*

In May 1992 the Security Council imposed sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro), in order to induce it to cease engaging in acts of interference in Bosnia-Herzegovina. The sanctions régime consisted of a comprehensive blend of measures, the concrete objectives of which evolved in response to developments on the ground. The sanctions were suspended gradually over a period of twelve months, beginning in September 1994. Ultimately the sanctions régime was terminated in October 1996, after free and fair elections had been held in Bosnia and Herzegovina.

7.1 *The constitutional basis for imposing sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro)*

On 15 May 1992, the Security Council expressed deep concern about the serious situation in certain parts of the former Socialist Federal Republic of Yugoslavia and in particular about the rapid and violent deterioration of the situation in Bosnia and Herzegovina.¹ The Council then made a number of demands, including: that all parties and others concerned in Bosnia and Herzegovina stop fighting immediately;² that all forms of interference from outside Bosnia and Herzegovina cease immediately;³ that Bosnia and Herzegovina's neighbours take swift action to end all interference in and respect the territorial integrity of Bosnia and Herzegovina;⁴ that the Yugoslav People's Army be

¹ S/RES/752 (15 May 1992), preambular paragraph 3.

² S/RES/752 (15 May 1992), operative paragraph 1.

³ S/RES/752 (15 May 1992), operative paragraph 3.

⁴ S/RES/752 (15 May 1992), operative paragraph 3.

disbanded and disarmed;⁵ and that all irregular forces in Bosnia and Herzegovina also be disbanded and disarmed.⁶ Two weeks later, on 30 May 1992, the Security Council deplored the fact that its demands had not been complied with,⁷ recalled its primary responsibility under the U.N. Charter for the maintenance of international peace and security,⁸ determined that the situation in Bosnia and Herzegovina and other parts of the former Socialist Federal Republic of Yugoslavia constituted a threat to international peace and security,⁹ and invoked Chapter VII of the Charter,¹⁰ before proceeding to impose comprehensive sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro).¹¹ In subsequent decisions related to the sanctions régime, the Council reaffirmed the continued existence of a threat to international peace and security,¹² and again invoked Chapter VII of the Charter.¹³

⁵ S/RES/752 (15 May 1992), operative paragraph 4.

⁶ S/RES/752 (15 May 1992), operative paragraph 5.

⁷ S/RES/757 (30 May 1992), preambular paragraph 4.

⁸ S/RES/757 (30 May 1992), preambular paragraph 12.

⁹ S/RES/757 (30 May 1992), preambular paragraph 17.

¹⁰ S/RES/757 (30 May 1992), preambular paragraph 18.

¹¹ S/RES/757 (30 May 1992), operative paragraphs 3-8.

¹² See, e.g., S/RES/787 (16 November 1992), preambular paragraph 2; S/RES/1022 (22 November 1995), preambular paragraph. In other sanctions-related resolutions the Council invoked Chapter VII without explicitly determining the existence of a threat to international peace and security, which might be interpreted either as referring back to the above determinations of a threat to peace and security or as amounting to an implicit determination of a threat to international peace and security. For those resolutions invoking Chapter VII, see the following note.

¹³ See, e.g., S/RES/760 (18 June 1992), preambular paragraph 2; S/RES/787 (16 November 1992), operative paragraphs 9, 10, 12; S/RES/820 (17 April 1993), Section B, preambular paragraph 2, operative paragraph 19; S/RES/943 (23 September 1994), preambular paragraph 10; S/RES/967 (14 December 1994), preambular paragraph 3; S/RES/970 (12 January 1995), preambular paragraph 5; S/RES/988 (21 April 1995), preambular paragraph 7; S/RES/992 (11 May 1995), preambular paragraph 6; S/RES/1003 (5 July 1995), preambular paragraph 8; S/RES/1015 (15 September 1995), preambular paragraph 6; S/RES/1022 (22 November 1995), preambular paragraph 11; S/RES/1074 (1 October 1996), preambular paragraph 9.

7.2 The objective of the FRY sanctions régime

The objective of the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro) was the compliance by the Federal Republic of Yugoslavia (Serbia and Montenegro) with demands that had been outlined by the Council two weeks earlier, including: adherence to a cease-fire; cooperation with the peace process being initiated by the EC; and the effective withdrawal, disbandment or disarmament of all military forces operating in the area, with the exception of UNPROFOR and the forces of the government of Bosnia and Herzegovina.¹⁴ When it established the sanctions régime, the Security Council explicitly stated that the sanctions would be terminated once authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) had taken effective measures to comply with those demands.¹⁵

As the sanctions régime evolved, the Council modified subtly the concrete requirements that needed to be satisfied by the Federal Republic of Yugoslavia (Serbia-Montenegro) before the sanctions could be suspended or terminated. In April 1993, the Council expressed its readiness to review the sanctions with a view to lifting them gradually after all three Bosnian parties had accepted the Bosnian peace plan and if the Secretary-General were to verify that the Bosnian Serb party was cooperating in good faith in the

¹⁴ These demands had been outlined in S/RES/752 (15 May 1992), operative paragraphs 1-5. Specifically, the Council had demanded: (a) That all parties involved in Bosnia and Herzegovina stop fighting immediately, respect the cease-fire of 12 April and cooperate with the efforts of the EC to bring about a negotiated settlement [operative paragraphs 1, 2]; (b) That all forms of interference from outside Bosnia and Herzegovina cease immediately and that Bosnia and Herzegovina's neighbours take swift action to end all such interference [operative paragraph 3]; (c) That those units of the former Yugoslav People's Army and elements of the Croatian Army then in Bosnia and Herzegovina be withdrawn, or become subject to the authority of the government of Bosnia and Herzegovina, or be disbanded and disarmed with their weapons placed under effective international monitoring [operative paragraph 4]; and (e) That all irregular forces in Bosnia and Herzegovina be disbanded and disarmed [operative paragraph 5].

implementation of the plan.¹⁶ In September 1994 the Council suspended certain aspects of the aviation and maritime sanctions, as well as the sporting and cultural sanctions,¹⁷ contingent upon the authorities of the Federal Republic of Yugoslavia (Serbia-Montenegro) ensuring the effective closure of the border between the Federal Republic of Yugoslavia (Serbia-Montenegro) and Bosnia and Herzegovina with respect to all goods except foodstuffs, medical supplies and clothing for essential humanitarian need.¹⁸ The Council confirmed that the objective of the suspensions was to ensure the border remained closed by requesting the Secretary-General to submit periodical reports on whether the border-closure was being implemented effectively and providing that if the Secretary-General were to report that the authorities of the Federal Republic of Yugoslavia (Serbia-Montenegro) were not effectively implementing the closure then the suspensions would terminate.¹⁹ In November 1995, the Council decided that it would terminate the sanctions on the tenth day following the occurrence of free and fair elections in Bosnia and Herzegovina, provided that the Bosnian Serbs were continuing to respect the implementation of the Bosnian Peace Agreement.²⁰

¹⁵ S/RES/757 (30 May 1992), operative paragraph 3.

¹⁶ S/RES/820 (17 April 1993), operative paragraphs 10, 31.

¹⁷ S/RES/943 (23 September 1994), operative paragraph 1. The particular sanctions suspended were: (a) The prohibitions upon flights carrying passengers and their personal effects to and from Belgrade; (b) The prohibitions upon the ferry service carrying passengers and their personal effects between Bar in the Federal Republic of Yugoslavia (Serbia-Montenegro) and Bari in Italy; and (c) The prohibitions upon participation in sporting events and cultural exchanges.

¹⁸ S/RES/943 (23 September 1994), operative paragraph 1.

¹⁹ S/RES/943 (23 September 1994), operative paragraphs 3, 4

²⁰ S/RES 1022 (22 November 1995), operative paragraph 4.

7.3 The scope of the FRY sanctions régime

The sanctions regime against the Federal Republic of Yugoslavia (Serbia and Montenegro) initially consisted of a range of measures spanning practically the full gamut of possibilities envisaged in Article 41, including economic, financial, aviation, diplomatic, sporting and cultural sanctions. The Council subsequently modified the sanctions regime on a number of occasions. The modifications generally had the effect of strengthening the sanctions, but occasionally they broadened the category of exemptions permitted under the regime.

When the Security Council first established the sanctions régime, it imposed a complex blend of economic, financial, diplomatic, sporting and cultural sanctions. On the economic front, States were required to prevent: (a) The import into their territories of all commodities and products originating in the Federal Republic of Yugoslavia (Serbia and Montenegro);²¹ (b) Activities with the aim of promoting the export of commodities or products originating in the Federal Republic of Yugoslavia (Serbia and Montenegro);²² and (c) The export of any commodities or products to the Federal Republic of Yugoslavia (Serbia and Montenegro).²³ The financial sanctions required States to refrain from providing

²¹ S/RES/757 (30 May 1992), operative paragraph 4(a).

²² S/RES/757 (30 May 1992), operative paragraph 4(b).

²³ S/RES/757 (30 May 1992), operative paragraph 4(c). The economic sanctions did not apply, however, to: (a) medical supplies and foodstuffs [S/RES/757 (30 May 1992), operative paragraph 4(c). The Council subsequently expanded these exemptions to incorporate commodities and products for essential humanitarian need, as approved by the sanctions committee: S/RES/760 (18 June 1992), sole operative paragraph. In its *Final Report*, the 724 Committee noted that an important part of its work had been determining the commodities and products that fell within the phrase "essential humanitarian need". It considered applications for exemptions under that category on a case-by-case basis: *Final Report of the 724 Committee*, below note 67, paragraph 13]; (b) the trans-shipment through the Federal Republic of Yugoslavia (Serbia and Montenegro) of commodities and products, with the approval of the 724 Committee [S/RES/757 (30 May 1992), operative paragraph 6. As noted in section 7.4, below, rather than establishing a new Sanctions Committee to oversee the administration, implementation and enforcement of the sanctions régime against the Federal Republic of

any funds or other financial or economic resources to any commercial, industrial or public utility operating in the Federal Republic of Yugoslavia (Serbia and Montenegro) and to prevent the removal of funds or resources from their territories to the Federal Republic of Yugoslavia (Serbia and Montenegro).²⁴ The aviation sanctions required States to deny permission to any aircraft to take off from, land in, or overfly their territories if it was destined for or had departed from the Federal Republic of Yugoslavia (Serbia and Montenegro) and to prohibit the provision of maintenance services and parts in support of aircraft registered in that country.²⁵ On the diplomatic front, the Council required States to reduce the level of staff at diplomatic missions and consular posts of the Federal Republic of Yugoslavia (Serbia and Montenegro).²⁶ On the sporting front, States were required to prevent the participation in sporting events on their territory of persons or groups representing the Federal Republic of Yugoslavia (Serbia and Montenegro).²⁷ On the cultural front, States were required to suspend scientific and technical cooperation and cultural

Yugoslavia (Serbia-Montenegro), the Security Council bestowed oversight responsibilities upon the Committee already established to oversee the sanctions régime against the former Yugoslavia – the 724 Committee. For details relating to the establishment of the 724 Committee, see section 4.4, above]; and (c) the activities of UNPROFOR, the CY and the EC Monitoring Mission [S/RES/757 (30 May 1992), operative paragraph 10. The Council reaffirmed the ongoing exemption of these entities in subsequent resolutions: see, e.g., S/RES/820 (17 April 1993), operative paragraph 30].

²⁴ S/RES/757 (30 May 1992), operative paragraph 5. The financial sanctions would not apply, however, to payments for food, medicine or humanitarian purposes [S/RES/757 (30 May 1992), operative paragraph 5], nor to the activities of UNPROFOR, the CY and the EC Monitoring Mission [S/RES/757 (30 May 1992), operative paragraph 10. The Council reaffirmed the ongoing exemption of these entities in subsequent resolutions: see, e.g., S/RES/820 (17 April 1993), operative paragraph 30].

²⁵ S/RES/757 (30 May 1992), operative paragraph 7(a) and (b). The aviation sanctions would not apply to flights made for humanitarian or other purposes consistent with the sanctions regime, when approved by the 724 Committee [S/RES/757 (30 May 1992), operative paragraph 7(a)], nor to the activities of UNPROFOR, the CY and the EC Monitoring Mission [S/RES/757 (30 May 1992), operative paragraph 10. The Council reaffirmed the ongoing exemption of these entities in subsequent resolutions: see, e.g., S/RES/820 (17 April 1993), operative paragraph 30].

²⁶ S/RES/757 (30 May 1992), operative paragraph 8(a).

²⁷ S/RES/757 (30 May 1992), operative paragraph 8(b).

exchanges and visits involving persons or groups officially sponsored by or representing the Federal Republic of Yugoslavia (Serbia and Montenegro).²⁸

In June 1992, the Council contracted the scope of the sanctions slightly, by clarifying that exemptions would be permitted from the sanctions for the provision of commodities and products for essential humanitarian need,²⁹ and for the provision of financial resources for the purchase of such products and commodities.³⁰

In November 1992, the Security Council strengthened the sanctions, prohibiting the transshipment through the Federal Republic of Yugoslavia (Serbia and Montenegro) of particular products and commodities, including crude oil, petroleum products, coal, energy-related equipment, iron, steel, other metals, chemicals, rubber, tyres, vehicles, aircraft and motors of all types.³¹

In April 1993, the Council strengthened considerably the application of the existing economic and financial sanctions. In connection with the economic sanctions, the Council required States: (a) to prevent all transshipments through the Federal Republic of Yugoslavia (Serbia and Montenegro);³² (b) to prevent the passage through its territories of vessels registered in the Federal Republic of Yugoslavia (Serbia and Montenegro), owned by a person or undertaking from the Federal Republic of Yugoslavia (Serbia and Montenegro) or

²⁸ S/RES/757 (30 May 1992), operative paragraph 8(c).

²⁹ S/RES/760 (18 June 1992), sole operative paragraph.

³⁰ *Ibid.*

³¹ S/RES/787 (16 November 1992), operative paragraph 9. Exemptions from these prohibitions were only permitted when authorised on a case-by-case basis by the 724 Committee: *ibid.*

³² S/RES/820 (17 April 1993), operative paragraph 15. The Council provided that an exemption from these prohibitions would only be permitted when specifically authorised by the 724 Committee: *ibid.* Such exemptions would further be subject to effective monitoring as they passed along the Danube between the border points of Vidin/Calafat and Mohacs: *ibid.*

suspected of having violated the sanctions;³³ (c) to prohibit the transport of any commodities or products across the land borders, or to the ports, of the Federal Republic of Yugoslavia (Serbia and Montenegro);³⁴ (d) to impound all means of transport owned or operated from the Federal Republic of Yugoslavia (Serbia and Montenegro) or suspected of having violated the arms embargo or sanctions;³⁵ (e) to detain any other means of transport suspected of having violated the embargo or the sanctions;³⁶ and (f) to prohibit commercial maritime traffic from entering the territorial sea of the Federal Republic of Yugoslavia (Serbia and Montenegro).³⁷ At the same time, the Council also required States neighbouring the Federal Republic of Yugoslavia (Serbia-Montenegro) to prevent the passage into or out of that country of all freight vehicles and rolling stock, except at a limited number of road and rail crossings to be notified to the 724 Committee.³⁸

In connection with the financial sanctions, the Council required States: (a) to freeze funds in their territories belonging to or controlled by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) or commercial, industrial or public undertakings from the Federal Republic of Yugoslavia (Serbia and Montenegro);³⁹ and (b) to prevent the

³³ S/RES/820 (17 April 1993), operative paragraph 16(a), (b) and (c).

³⁴ S/RES/820 (17 April 1993), operative paragraph 22. Exemptions were made from this prohibition for: medical supplies and foodstuffs; other essential humanitarian supplies when approved on a case-by-case basis by the 724 Committee; and limited transshipments when authorised on an exceptional basis by the committee: *ibid.*

³⁵ S/RES/820 (17 April 1993), operative paragraph 24.

³⁶ S/RES/820 (17 April 1993), operative paragraph 25.

³⁷ S/RES/820 (17 April 1993), operative paragraph 28. The Council provided that exceptions would be permitted from this prohibition when authorised on a case-by-case basis by the 724 Committee and in the case of *force majeure*: *ibid.*

³⁸ S/RES/820 (17 April 1993), operative paragraph 23.

³⁹ S/RES/820 (17 April 1993), operative paragraph 21.

provision of services, financial or otherwise, to any person or body for the purposes of any business carried on in the Federal Republic of Yugoslavia (Serbia and Montenegro).⁴⁰

In September 1994, the Security Council contracted the scope of the sanctions slightly, by stipulating that the sanctions would not apply to “clothing for essential humanitarian need”,⁴¹ and by suspending aspects of the sanctions. The suspended aspects included the prohibitions against: (a) Civilian, non-cargo carrying aircraft; (b) Passenger, non-cargo carrying ferries between Bar in the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bari in Italy; and (c) Participation in sporting events and cultural exchanges.⁴²

In December 1994, the Council contracted the scope of the sanctions temporarily by provided a temporary exemption for the export of diphtheria anti-serum.⁴³ In May 1995, it again provided temporary exemptions from the sanctions, this time for (a) The use of Rumanian river locks by vessels registered in or owned by a person or entity from the

⁴⁰ S/RES/820 (17 April 1993), operative paragraph 27. The Council stipulated that the only exceptions to this prohibition were telecommunications, postal services, legal services consistent with the sanctions, and, as approved on a case-by-case basis, services whose supply may be necessary for humanitarian or other exceptional purposes: *ibid.*

⁴¹ The Council first articulated clothing as an exemption in S/RES/943 (23 September 1994), operative paragraph 3. It subsequently reaffirmed this innovation in S/RES/970 (12 January 1995), operative paragraph 5, and S/RES/988 (21 April 1995), operative paragraphs 13, 15.

⁴² S/RES/943 (23 September 1994), operative paragraph 1(i), (ii) and (iii). The suspension of those aspects of the sanctions was temporary, but subject to extension upon certification that the border between the Federal Republic of Yugoslavia (Serbia-Montenegro) and Bosnia and Herzegovina was being closed to commodities and products prohibited under the sanctions régime against the Bosnian Serbs. The suspension of the sanctions was renewed on a number of occasions, meaning that by the time the sanctions régime as a whole was suspended, the initially suspended aspects of the sanctions had not been reimposed. For further discussion of these suspensions and the process of certification upon which their renewals relied, see section 7.5, below.

⁴³ S/RES/967 (14 December 1994), operative paragraph 1. This exemption was recommended by the 724 Committee: see *Final Report of the 724 Committee*, below note 67, paragraph 16(g). The Council permitted the export of the serum for a limited period of 30 days in order to address a shortfall of the serum in places other than the Federal Republic of Yugoslavia (Serbia and Montenegro). In permitting the export of the serum the Council stipulated that payment for the

Federal Republic of Yugoslavia (Serbia and Montenegro) while locks on the Serbian bank of the Danube were undergoing repair;⁴⁴ and (b) The provision of supplies essential to those repairs.⁴⁵

7.4 The administration, monitoring and enforcement of the FRY sanctions régime

The Council bestowed primary responsibility for oversight of the sanctions upon the Committee already established to oversee the arms embargo imposed upon all States of the former Yugoslavia.⁴⁶ As with the embargo, a number of other actors were involved in the administration, implementation, and enforcement of the sanctions, including the Secretary-General, States, regional organisations, and entities created for the specific purpose of resolving the conflict in the territory of the former Yugoslavia or of facilitating the effective implementation of the sanctions.⁴⁷

7.4.1 The 724 Sanctions Committee

When it established the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), the Security Council bestowed responsibilities upon the Sanctions Committee which had been established in order to oversee the administration of the arms embargo against the States of the former Yugoslavia.⁴⁸ It thus decided that the 724 Committee would assume the following tasks in relation to the sanctions régime against the

serum could only be paid into frozen accounts of the Federal Republic of Yugoslavia (Serbia and Montenegro): *ibid*, operative paragraph 2.

⁴⁴ S/RES/992 (11 May 1995), operative paragraph 1. This exemption was recommended by the 724 Committee: see *Final Report of the 724 Committee*, below note 67, paragraph 16(h).

⁴⁵ S/RES/992 (11 May 1995), operative paragraph 2.

⁴⁶ S/RES/757 (30 May 1992), operative paragraph 13.

⁴⁷ These were the same actors and entities involved in the implementation of the arms embargo imposed against all the States of the former Yugoslavia: see section 4.4, above.

Federal Republic of Yugoslavia (Serbia-Montenegro): (a) Examining reports submitted by States on steps taken to implement the sanctions;⁴⁹ (b) Seeking further information from States regarding action taken to implement the sanctions;⁵⁰ (c) Considering information concerning violations and making recommendations to the Council on how to increase the effectiveness of the sanctions;⁵¹ (d) Recommending appropriate measures in response to violations and providing information on a regular basis to the Secretary-General for general distribution to Member States;⁵² (e) Considering and approving guidelines for the transshipment through the Federal Republic of Yugoslavia (Serbia-Montenegro) of exempted items;⁵³ and (f) Considering and deciding expeditiously upon applications for exemptions from the aviation sanctions.⁵⁴

In November 1992 the Council required the 724 Committee to undertake the following additional responsibility in relation to the oversight of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro): (g) Considering, on a case-by-case basis, applications for exemptions to the ban on transshipment of particular goods under 787.⁵⁵

In April 1993, the Council outlined the following further responsibilities: (h) Making periodic reports to the Security Council on information submitted to it regarding alleged violations of the relevant resolutions, identifying where possible persons or entities, including

⁴⁸ For information relating to the establishment of the 724 Committee, see section 4.4, above.

⁴⁹ S/RES/757 (30 May 1992), operative paragraph 13(a).

⁵⁰ S/RES/757 (30 May 1992), operative paragraph 13(b).

⁵¹ S/RES/757 (30 May 1992), operative paragraph 13(c).

⁵² S/RES/757 (30 May 1992), operative paragraph 13(d).

⁵³ S/RES/757 (30 May 1992), operative paragraph 13(e).

⁵⁴ S/RES/757 (30 May 1992), operative paragraph 13(f).

⁵⁵ S/RES/787 (16 November 1992), operative paragraph 9.

vessels, reported to be engaging in such violations;⁵⁶ (i) Drawing up rules for monitoring sanctions, including provisions relating to the monitoring of exemptions;⁵⁷ (j) Considering, on a case-by-case basis under the no-objection procedure, applications for exemptions from the sanctions for the importation of essential humanitarian supplies that were not medical supplies or foodstuffs;⁵⁸ (k) Authorizing limited transshipments through the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro);⁵⁹ (l) Considering, on a case-by-case basis, applications for exemptions from the financial sanctions for the provision of services for humanitarian or other exceptional purposes;⁶⁰ and (m) Considering, on a case-by-case basis, applications for exemptions from the prohibition on commercial maritime traffic entering the territorial sea of the Federal Republic of Yugoslavia (Serbia and Montenegro).⁶¹

In June 1993 the Council also invited the 724 Committee: (n) To make recommendations to the President of the Council regarding requests made for assistance under Article 50 of the Charter.⁶² In September 1994, the Council requested that the 724 Committee adopt appropriate streamlined procedures for expediting its consideration of applications for exemptions from the sanctions for legitimate humanitarian assistance, in particular for applications from UNHCR and the ICRC.⁶³ In November 1995, when the

⁵⁶ S/RES/820 (17 April 1993), operative paragraph 18.

⁵⁷ S/RES/820 (17 April 1993), operative paragraph 22(a).

⁵⁸ S/RES/820 (17 April 1993), operative paragraph 22(b).

⁵⁹ S/RES/820 (17 April 1993), operative paragraph 22(c).

⁶⁰ S/RES/820 (17 April 1993), operative paragraph 27.

⁶¹ S/RES/820 (17 April 1993), operative paragraph 28.

⁶² S/RES/843 (18 June 1993), operative paragraph 2.

⁶³ S/RES/943 (23 September 1994), operative paragraph 2. In April 1995 the Council again urged the Committee to conclude its elaboration of streamlined procedures and invited the Chairman of the 724 Committee to report to it on the matter as soon as possible: S/RES/988 (21 April 1995), operative paragraph 11. The Council also reaffirmed on multiple occasions its request

Council suspended the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro), it further requested that the Committee review and amend its guidelines in the light of the fact that the sanctions had been suspended.⁶⁴

As noted above in the overview of the sanctions régime against the former Yugoslavia,⁶⁵ the 724 Committee held 142 formal meetings during its tenure.⁶⁶ Two of its three annual reports – the Second Report of the 724 Committee and the Final Report of the 724 Committee – were issued after the establishment of the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro).⁶⁷ In the reports the Committee outlined action taken in relation to processing applications for exemptions from the sanctions,⁶⁸ as well as its consideration of actual or suspected violations of the sanctions.⁶⁹ It also made some recommendations that were subsequently acted upon by the Council, including authorizing temporary exemptions from the sanctions for the export of diphtheria serum and for vessels of the Federal Republic of Yugoslavia (Serbia-Montenegro) to use

that the ICRC, UNHCR and other organizations in the U.N. system be granted priority in the processing of applications for exemptions from the sanctions for the provision of humanitarian assistance. See, e.g.: S/RES/970 (12 January 1995), operative paragraph 4; S/RES/988 (21 April 1995), operative paragraph 12.

⁶⁴ S/RES 1022 (22 November 1995), operative paragraph 8.

⁶⁵ See section 4.4, above.

⁶⁶ The 142nd and last meeting of the Committee took place on 19 September 1996: *Index to Proceedings of the Security Council for 1996* (1997) United Nations, New York, p. xiii.

⁶⁷ S/25027 (30 December 1992): *Second Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia* (hereafter “*Second Report of the 724 Committee*”) [containing a report of the Committee’s activities from 9 April until 29 December 1992]; S/1996/946 (15 November 1996), annex: *Final Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia*, (hereafter “*Final Report of the 724 Committee*”) [containing a summary of the Committee’s activities from January 1993 until the termination of the sanctions régime on 1 October 1996].

⁶⁸ See: *Second Report of the 724 Committee*, *ibid*, paragraphs 16-18; *Final Report of the 724 Committee*, above note 67, paragraphs 6-7, 12-13, 34-38, 43-61, 64-67.

⁶⁹ See: *Second Report of the 724 Committee*, above note 67, paragraphs 19-22; *Final Report of the 724 Committee*, above note 67, paragraphs 18-28.

the locks on the Romanian side of the Danube while repairs were being carried out to the locks on the Serbian side of the river.⁷⁰

In observations and conclusions outlined in its *Second Report*, the 724 Committee emphasised noted that the application of the sanctions was the responsibility of States and that its role was to offer assistance to the States in undertaking that responsibility.⁷¹ It also observed that the task of monitoring the sanctions had been complicated by the fact that the Federal Republic of Yugoslavia (Serbia-Montenegro) was located at the hub of intense economic and cultural activity in the south-eastern region of Europe.⁷² At the same time, the implementation of the sanctions had had an adverse impact on the economies of a number of countries, including in particular the States neighbouring the Federal Republic of Yugoslavia (Serbia-Montenegro).⁷³

The Committee also noted that it had been disappointed by the lack of information it had received on violations of the sanctions, whilst the international media had been “replete” with reports of such violations, and observed that the success of the sanctions depended upon the active cooperation of all States.⁷⁴ It further observed that the lack of an independent monitoring mechanism had inhibited its ability to obtain original information and to follow-up on alleged violations.⁷⁵ In that respect, however, it was grateful for information received from sources such as the North Atlantic Treaty Organization (NATO) and the

⁷⁰ See: *Final Report of the 724 Committee*, above note 67, paragraphs 16(g) and 16(h). The exemptions were authorized by the Council in S/RES/967 (14 December 1994), operative paragraph 1 [for the diphtheria serum] and S/RES/992 (11 May 1995), operative paragraph 1 [for the repairs to the Serbian side of the Danube].

⁷¹ See: *Second Report of the 724 Committee*, above note 67, paragraph 25.

⁷² See: *Second Report of the 724 Committee*, above note 67, paragraph 23.

⁷³ See: *Second Report of the 724 Committee*, above note 67, paragraph 23.

⁷⁴ See: *Second Report of the 724 Committee*, above note 67, paragraph 24.

⁷⁵ *Second Report of the 724 Committee*, above note 67, paragraph 25.

Western European Union (WEU) monitoring teams in the Adriatic Sea, and it looked forward to working in cooperation with the EC/CSCE/OSCE Sanctions Assistance Missions (SAMs).⁷⁶

The Committee's *Final Report* contained a detailed summary of its activities in relation to the administration, implementation and enforcement of the sanctions, as well as some substantive observations and recommendations. The Committee observed that the sanctions régime against the Federal Republic of Yugoslavia (Serbia and Montenegro) had demonstrated that sanctions, if properly applied, administered and implemented, could promote international peace and security.⁷⁷ Based on its experience, the Committee recommended that in the implementation of future sanctions régimes, practical arrangements should be considered for alleviating adverse humanitarian effects of sanctions.⁷⁸ An example of such arrangements would be giving international humanitarian agencies clearly defined preferential treatment, provided that adequate monitoring and control mechanisms were in place.⁷⁹ The Committee also considered it to be essential that the U.N. Secretariat establish an adequate capacity for analysis and assessment of the effectiveness of sanctions and their

⁷⁶ *Ibid.* For information relating to the activities of the WEU, NATO and the SAMs, see below.

⁷⁷ *Final Report of the 724 Committee*, above note 67, paragraph 86. The Committee noted that a major reason for the effectiveness of the sanctions was the role played by regional organizations in monitoring and enforcing the sanctions: see *Final Report of the 724 Committee*, above note 67, paragraph 79. For discussion of the activities of regional organizations in relation to the Federal Republic of Yugoslavia (Serbia and Montenegro) sanctions régime, see below.

⁷⁸ *Final Report of the 724 Committee*, above note 67, paragraph 82. The Committee also included in its *Final Report* a sections entitled "Humanitarian impact and cooperation with humanitarian relief organizations": *Final Report of the 724 Committee*, above note 67, paragraphs 68-78.

⁷⁹ *Ibid.*

humanitarian impact.⁸⁰ Another serious issue in relation to the implementation of sanctions was the need to mitigate the adverse economic effects of sanctions upon third countries.⁸¹

7.4.2 The Secretary-General

During the course of the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro) the Security Council requested the Secretary-General to undertake the following tasks: (a) Receive reports from States on measures taken to implement the sanctions;⁸² (b) Co-ordinate the submission by States and regional agencies or arrangements regarding action taken to halt maritime and riparian traffic to verify that cargo was not being transported in violation of the sanctions;⁸³ (c) Submit recommendations for facilitating the implementation of its resolutions by deploying observers on the borders of Bosnia and Herzegovina;⁸⁴ (d) Reporting to the Council if within nine days of the adoption of resolution 820 (1993) the Bosnian Serbs had signed and begun to implement the peace plan, in which case the sanctions would not be imposed;⁸⁵ (e) In the event that the Bosnian Serbs did sign and begin to implement the peace process, thus meaning that the sanctions were not in fact imposed, to report to the Council if the Bosnian Serbs had renewed military attacks or failed to comply with the peace plan, in which case the sanctions would

⁸⁰ *Final Report of the 724 Committee*, above note 67, paragraph 83.

⁸¹ *Final Report of the 724 Committee*, above note 67, paragraph 84.

⁸² S/RES/757 (30 May 1992), operative paragraph 12 [this request was implicit, as the paragraph requested States to report to the Secretary-General on measures taken to implement the sanctions].

⁸³ S/RES/787 (16 November 1992), operative paragraph 14. The Council had authorized States to take such action in the same resolution – see below.

⁸⁴ S/RES/787 (16 November 1992), operative paragraph 16. The Secretary-General was subsequently requested to submit an additional report on this subject: S/RES/838 (10 June 1993), operative paragraph 1.

⁸⁵ S/RES/820 (17 April 1993), operative paragraph 10.

immediately come into effect;⁸⁶ and (f) Once the sanctions had been imposed, to report to the Council if the Bosnian Serbs had signed the peace plan and was implementing its obligations in good faith, in which case the Council would review the sanctions with a view to lifting them gradually;⁸⁷ (g) To contact Member States, nationally or through regional organizations or arrangements, to ensure the availability of any relevant material derived from aerial surveillance and to report thereon to the Security Council;⁸⁸ and (h) To submit to it every 30 days a report on whether the Co-Chairmen of the Steering Committee of the ICFY had certified that the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) were effectively implementing their decision to close the border between the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Bosnia and Herzegovina to goods and products prohibited under the sanctions régime and to report immediately if there was evidence that those authorities are not effectively implementing their decision to close the border.⁸⁹

Once the sanctions had been suspended, the Secretary-General was requested to report to the Council if the Federal Republic of Yugoslavia had failed to sign the Peace Agreement,⁹⁰ or if it was failing to meet its obligations under the Peace Agreement.⁹¹ In either instance, the suspension of the sanctions would lapse after five days.⁹²

⁸⁶ S/RES/820 (17 April 1993), operative paragraph 11.

⁸⁷ S/RES/820 (17 April 1993), operative paragraph 31.

⁸⁸ S/RES/838 (10 June 1993), operative paragraph 2.

⁸⁹ S/RES/943 (23 September 1994), operative paragraph 3; S/RES/970 (12 January 1995), operative paragraph 5; S/RES/988 (21 April 1995), operative paragraph 13; S/RES/1003 (5 July 1995), operative paragraph 2; S/RES/1015 (15 September 1995), operative paragraph 2.

⁹⁰ S/RES/1022 (22 November 1995), operative paragraph 1.

⁹¹ S/RES/1022 (22 November 1995), operative paragraph 3.

⁹² S/RES/1022 (22 November 1995), operative paragraphs 1, 3.

7.4.3 States

In addition to the general obligation flowing from the establishment of the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro) for States to do everything in their power to implement the sanctions within their own jurisdictions, States were also requested or authorized by the Security Council to take various actions to implement, monitor and enforce the sanctions. The Council's additional requests were sometimes addressed to States in general and sometimes directed at States either neighbouring or located in the region surrounding the Federal Republic of Yugoslavia (Serbia-Montenegro).

i. States in general

When the sanctions were first established against the Federal Republic of Yugoslavia (Serbia-Montenegro), the Council called upon all States, including States not members of the United Nations, to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations,⁹³ requested all States to report to the Secretary-General on measures taken to implement the sanctions,⁹⁴ and called upon them to cooperate fully with the 724 Committee.⁹⁵ In November 1992, the Council called upon all States to take all necessary steps to ensure that none of their exports were diverted to the Federal Republic of Yugoslavia (Serbia-Montenegro) in violation of the sanctions.⁹⁶ The Council also invoked Chapters VII and VIII of the Charter in calling upon States, acting nationally or through regional agencies or arrangements, to use such measures

⁹³ S/RES/757 (30 May 1992), operative paragraph 11.

⁹⁴ S/RES/757 (30 May 1992), operative paragraph 12.

⁹⁵ S/RES/757 (30 May 1992), operative paragraph 14.

⁹⁶ S/RES/787 (16 November 1992), operative paragraph 11.

as necessary to halt outward and inward maritime shipping in order to inspect and verify that cargo did not violate the sanctions.⁹⁷ At the same time, the Council requested States to report, in coordination with the Secretary-General, to the Security Council on any measures taken to ensure that maritime or riparian shipping did not violate the sanctions,⁹⁸ and to provide, in accordance with the Charter, such assistance as might be required by States acting in pursuance of its authority to use necessary measures to implement the sanctions.⁹⁹

In April 1993, the Council required States in general to take the following action: to take steps to prevent the diversion to the territory of the Federal Republic of Yugoslavia (Serbia-Montenegro) of commodities and products said to be destined for other areas,¹⁰⁰ to impound all vessels, freight vehicles, rolling stock and aircraft in their territories if owned or possessed by an individual or entity from the Federal Republic of Yugoslavia (Serbia-Montenegro);¹⁰¹ and to detain vessels, freight vehicles, rolling stock, aircraft and cargoes suspected of having violated the sanctions.¹⁰² At the same time, the Council also requested or called upon States in general: to bring proceedings against persons and entities violating

⁹⁷ S/RES/787 (16 November 1992), operative paragraph 12. This call was reaffirmed in S/RES/820 (17 April 1993), operative paragraph 29.

⁹⁸ S/RES/787 (16 November 1992), operative paragraph 14.

⁹⁹ S/RES/787 (16 November 1992), operative paragraph 15. It is unclear exactly which provision or provisions of the Charter the Council had in mind when it requested that assistance be provided "in accordance with the Charter". It is likely, however, that the Council was implicitly invoking Article 2(5), which provides: "All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving any assistance to any state against which the United Nations is taking preventive or enforcement action".

¹⁰⁰ S/RES/820 (17 April 1993), operative paragraph 13.

¹⁰¹ S/RES/820 (17 April 1993), operative paragraph 24. The Council further provided in that same operative paragraph that upon a determination that those vessels, freight vehicles, rolling stock and aircraft might be forfeited to the seizing State upon a determination that they had been used in violation of the sanctions.

¹⁰² S/RES/820 (17 April 1993), operative paragraph 25. In the same operative paragraph the Council noted that detained vessels, freight vehicles, rolling stock, aircraft and cargoes might be subject to forfeit to the detaining State.

the sanctions and to impose appropriate penalties;¹⁰³ to report to the 724 Committee on actions taken to freeze funds belonging to or controlled by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) or commercial, industrial or public undertakings from the Federal Republic of Yugoslavia (Serbia and Montenegro);¹⁰⁴ and to provide such assistance as was required by riparian States to ensure that shipping on the Danube did not violate the sanctions.¹⁰⁵

Two years later, in April 1995, the Council requested Member States to make available the necessary resources to strengthen the ICFY Mission's capacity to carry out its tasks.¹⁰⁶

ii. *Riparian and Neighbour States*

The Security Council first outlined tasks required specifically of States neighbouring or located in the region surrounding the Federal Republic of Yugoslavia (Serbia-Montenegro) in November 1992. At that time it reaffirmed the responsibility of riparian States to take the measures necessary to ensure that shipping along the Danube did not violate the sanctions, including taking action to halt shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the sanctions.¹⁰⁷

In April 1993, the Council also required each State neighbouring the Federal Republic of Yugoslavia (Serbia-Montenegro) to prevent the passage of all freight vehicles

¹⁰³ S/RES/820 (17 April 1993), operative paragraph 19.

¹⁰⁴ S/RES/820 (17 April 1993), operative paragraph 21.

¹⁰⁵ S/RES/820 (17 April 1993), operative paragraph 17.

¹⁰⁶ S/RES/988 (21 April 1995), operative paragraph 6. The ICFY Mission was established to monitor and certify that the Federal Republic of Yugoslavia (Serbia-Montenegro) was adhering to its commitment to close its border with the areas of Bosnia and Herzegovina under the control of the Bosnian Serbs to all but foodstuffs and medical and humanitarian supplies. For discussion of the Mission's activities, see sections 7.4 and 9.4, below.

and rolling stock into or out of that country, except at a strictly limited number of road and rail crossing points, the locations of which would be notified to the 724 Committee.¹⁰⁸ At the same time, the Council also called upon riparian States to ensure that cabotage traffic along the Danube river between Vidin/Calafat and Mohacs was adequately monitored so that no vessels suspected of having violated the sanctions were permitted to pass,¹⁰⁹ and reaffirmed the responsibility of riparian States to take the necessary measures to ensure that shipping on the Danube did not violate the sanctions.¹¹⁰

In April 1995 States from which flights or ferry services were permitted to travel to the Federal Republic of Yugoslavia (Serbia-Montenegro) were requested to report to the Committee on the controls adopted by them to ensure that the sanctions régime was not violated.¹¹¹ In May 1995 the Council requested the Government of Romania, with the assistance of the EU/OSCE Sanctions Assistance Missions, to monitor the use of Romanian locks while repairs were being carried out to locks on the Serbian side of the river, including if necessary by inspections of the vessels and their cargo, in order to ensure that no goods were loaded or unloaded during the passage by the vessels through the locks of the Iron Gates I system.¹¹² The Council also requested Romania to deny passage through the locks on its bank of the Danube to any vessel suspected to have violated sanctions.¹¹³

iii. International organizations

¹⁰⁷ S/RES/787 (16 November 1992), operative paragraph 13. This responsibility was again reaffirmed by the Council in S/RES/820 (17 April 1993), operative paragraph 17.

¹⁰⁸ S/RES/820 (17 April 1993), operative paragraph 23.

¹⁰⁹ S/RES/820 (17 April 1993), operative paragraph 16.

¹¹⁰ S/RES/820 (17 April 1993), operative paragraph 17.

¹¹¹ S/RES/988 (21 April 1995), operative paragraph 4.

¹¹² S/RES/992 (11 May 1995), operative paragraph 3.

¹¹³ S/RES/992 (11 May 1995), operative paragraph 4.

When the Council established the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), it called upon all international organizations to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.¹¹⁴

7.4.4 Regional organizations and other regional entities involved in the implementation and enforcement of the sanctions¹¹⁵

As with the implementation of the arms embargo against the former Yugoslavia, regional organizations played a significant role in the implementation of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro). Among those regional organizations were: the European Community and its successor the European Union (the EC/EU);¹¹⁶ the Conference on Security and Cooperation in Europe and its successor the Organization for Security and Cooperation in Europe (the CSCE/OSCE);¹¹⁷ the Western European Union (WEU) and the North Atlantic Treaty Organization (NATO).¹¹⁸ A number

¹¹⁴ S/RES/757 (30 May 1992), operative paragraph 11.

¹¹⁵ For good summaries of the activities undertaken by regional organizations and other regional entities to implement and enforce the sanctions, see: *Final Report of the 724 Committee*, above note 67, paragraph 79; S/1996/776 (24 September 1996), annex: *Report of the Copenhagen Round Table on United Nations Sanctions in the Case of the Former Yugoslavia* (hereafter “*Report of the Copenhagen Round Table*”), paragraphs 25-60.

¹¹⁶ The EC/EU played a major role in the implementation of sanctions by establishing a number of entities to facilitate such implementation. The details relating to these entities appear later in this paragraph and accompanying footnotes.

¹¹⁷ Like the EC/EU, the CSCE/OSCE also played a major role in the implementation of sanctions by establishing a number of entities to facilitate such implementation. The details relating to these entities also appear later in this paragraph and accompanying footnotes.

¹¹⁸ The WEU and NATO patrolled the Adriatic Sea from July 1992 to June 1993 in order to ensure compliance by maritime traffic with the resolutions of the Security Council. From June 1993 the two organizations combined their efforts to form an operation entitled “Sharp Guard”. By the time WEU and NATO concluded their activities to enforce the sanctions, in June 1996, the organizations had challenged over 70,000 vessels and inspected almost 6,000 at sea. For further details relating to these activities of the WEU and NATO, see: *Final Report of the 724 Committee*, above note 67, paragraph 79(b); *Report of the Copenhagen Round Table*, above note 115, paragraphs 48-50. For discussion of the extent to which WEU and NATO action in this regard could be viewed as having been authorized by the Security Council prior to the

of these regional organizations also created subsidiary entities to facilitate resolution of the conflict in the former Yugoslavia in general or the implementation of sanctions in particular. The major entity established to address the conflict in the former Yugoslavia in general was the Conference on Yugoslavia (CY), which subsequently became the International Conference on the Former Yugoslavia (ICFY).¹¹⁹ Among the entities established with particular responsibilities for facilitating the implementation of sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) were: the EC/EU/CSCE/OSCE Sanctions Assistance Missions (SAMs),¹²⁰ the EC/EU/CSCE/OSCE Sanctions Coordinator,¹²¹ and

adoption of resolution 787 (1992) in November 1992, see the case-study on the former Yugoslavia in chapter 8, below.

In addition to its activities in the Adriatic Sea, the WEU also established a “Danube Mission”, which commenced operations in June 1993, assisting Bulgaria, Hungary and Romania in their efforts to prevent violations of sanctions and ensure that shipping on the Danube was in accordance with the resolutions of the Security Council. For further details relating to the activities of the WEU Danube Mission, see: *Final Report of the 724 Committee*, above note 67, paragraph 79(c); *Report of the Copenhagen Round Table*, above note 115, paragraphs 41-42.

¹¹⁹ The CY was established by the EC. In July 1992 the Security Council invited the EC, in cooperation with the Secretary-General, to examine the possibility of broadening the CY to provide it with “new momentum” in the search for a resolution to the conflict: S/24346 (24 July 1992): *Presidential Statement of 24 July 1992*. As a result, the ICFY was convened in London from 26 to 28 August 1992. The Conference adopted a Statement of Principles for a negotiated settlement of the problems of the former Yugoslavia. Subsequently, the ICFY was a key actor in facilitating the conclusion of the Vance-Owen peace plan and the Dayton Peace Agreement. For a summary of the CY/ICFY process, see *Report of the Copenhagen Round Table*, above note 115, paragraphs 25-27.

¹²⁰ The SAMs consisted largely of customs officers, who were deployed in States neighbouring the Federal Republic of Yugoslavia (Serbia-Montenegro) to help prevent violation of the sanctions. The Council welcomed the role of the SAMs in support of the implementation of the sanctions and invited it to work in close cooperation with the 724 Committee in S/RES/820 (17 April 1993), operative paragraph 20. For further details relating to the work of the SAMs, see: *Final Report of the 724 Committee*, above note 67, paragraph 79(a); *Report of the Copenhagen Round Table*, above note 115, paragraphs 32-35.

¹²¹ The position of the Sanctions Coordinator was established by the EC and the then CSCE in February 1993. The Sanctions Coordinator’s mandate included: assessing sanctions implementation, as well as the effects of the sanctions; advising States on customs and legal matters; bringing violations to the attention of the CSCE/OSCE, the 724 Committee and concerned Governments; and consulting with Governments on the investigation and prosecution of alleged violations of the sanctions: S/25272 (10 February 1993) [containing the full mandate of the Sanctions Coordinator]. The Security Council welcomed the appointment of the Sanctions Coordinator and invited him to work in close cooperation with the 724 Committee in S/RES/820 (17 April 1993), operative paragraph 20. For summaries of the Sanctions

the European Commission/CSCE/OSCE Sanctions Assistance Missions Communications Centre (SAMCOMM).¹²² The ICFY also established a Mission with the responsibility for monitoring the extent to which the Federal Republic of Yugoslavia (Serbia-Montenegro) was complying with its obligation to close its border with Bosnia and Herzegovina.¹²³ Whilst the ICFY Mission was not strictly monitoring the implementation of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro), its activities were directly intertwined with the sanctions, as the suspension of certain aspects of the sanctions was contingent upon the Mission certifying that that border was indeed closed.¹²⁴

When the Security Council suspended the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro), it paid tribute to neighbouring States, the mission of the ICFY, the EU/OSCE Sanctions Coordinator, SAMCOMM, the SAMs, the WEU Operation on the Danube and the NATO/WEU Sharp Guard Operation on the Adriatic Sea, for their “significant contribution to the achievement of a negotiated peace.”¹²⁵ In its *Final Report*, the 724 Committee also noted that an important factor in the effectiveness of the sanctions régime against the Federal Republic of Yugoslavia (Serbia and Montenegro)

Coordinator’s activities, see: *Final Report of the 724 Committee*, above note 67, paragraph 79(a); *Report of the Copenhagen Round Table*, above note 115, paragraphs 36-38.

¹²² SAMCOMM was established by the European Commission when it created the SAMs, in order to serve as a focal point for the exchange of information between the SAMs and the authorities of their host States. For summaries of SAMCOMM’s activities, see: *Final Report of the 724 Committee*, above note 67, paragraph 79(a); *Report of the Copenhagen Round Table*, above note 115, paragraphs 33-35.

¹²³ See, e.g., S/1994/1074 (19 September 1994), annex: *Report of the Co-Chairmen of the Steering Committee of the International Conference on the former Yugoslavia (ICFY) on the establishment and commencement of operations of an ICFY Mission to the Federal Republic of Yugoslavia (Serbia-Montenegro)*.

¹²⁴ For further discussion of the manner in which the suspension of aspects of the sanctions régime was conditional upon the ongoing certification by the ICFY Mission that the border was being effectively closed by the Federal Republic of Yugoslavia (Serbia-Montenegro), see section 7.5, below.

¹²⁵ S/RES/1022 (22 November 1995), operative paragraph 9.

had been the role played by regional organizations in assisting national authorities and the Committee itself to monitor and enforce the sanctions.¹²⁶

7.5 Suspension and Termination of the FRY sanctions régime

The Council first began to suspend aspects of the sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) in September 1994, when it foreshadowed the potential suspension of restrictions against: (a) Civilian, non-cargo carrying aircraft,¹²⁷ (b) Passenger, non-cargo carrying ferries between Bar in the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bari in Italy,¹²⁸ and (c) Participation in sporting events and cultural exchanges.¹²⁹ The suspensions were to come into effect upon certification by the ICFY Co-Chairmen that the Federal Republic of Yugoslavia (Serbia and Montenegro) had effectively closed the border between it and the Republic of Bosnia and Herzegovina to all goods except foodstuffs, medical supplies and clothing for essential humanitarian needs.¹³⁰ They were to apply for an extendable period of 100 days, and they were conditional upon the ongoing verification by the Secretary-General that the border remained closed.¹³¹ The suspensions subsequently came into effect and were extended on multiple occasions,¹³² as a result of the continuing certification by the Co-Chairmen of the ICFY that the border remained closed.¹³³

¹²⁶ *Final Report of the 724 Committee*, above note 67, paragraph 79.

¹²⁷ S/RES/943 (23 September 1994), operative paragraph 1(i).

¹²⁸ S/RES/943 (23 September 1994), operative paragraph 1(ii).

¹²⁹ S/RES/943 (23 September 1994), operative paragraph 1(iii).

¹³⁰ S/RES/943 (23 September 1994), operative paragraph 1.

¹³¹ S/RES/943 (23 September 1994), operative paragraph 4.

¹³² See: S/RES/970 (12 January 1995), operative paragraph 1 [extending the suspensions for 100 days]; S/RES/988 (21 April 1995), operative paragraph 1 [extending the suspensions for 75 days]; S/RES/1003 (5 July 1995), operative paragraph 1 [extending the suspensions for 75

In November 1995, in resolution 1022, the Council suspended all of the remaining sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro)¹³⁴ and foreshadowed their ultimate termination.¹³⁵ Both the suspension and the termination of the sanctions were conditional, however. The sanctions would be reapplied if the Secretary-General were to report that the Federal Republic of Yugoslavia (Serbia and Montenegro) had failed to sign the Peace Agreement prior to the date stipulated by the Contact Group of the ICFY,¹³⁶ or if subsequent to the signing of the agreement the Secretary-General were to report that the Federal Republic of Yugoslavia (Serbia and Montenegro) was “failing significantly to meet their obligations under the Peace Agreement.”¹³⁷ Furthermore, the sanctions would not be terminated until ten days after the occurrence of free and fair elections in Bosnia and Herzegovina.¹³⁸ Ultimately, in October 1996, once free and fair elections had been held in Bosnia and Herzegovina, the Council formally terminated the

days]; S/RES/1015 (15 September 1995), operative paragraph 1 [extending the suspensions for six months].

¹³³ The certifications by the Co-Chairmen, which were transmitted to the Council by the Secretary-General, were based upon the observations of the ICFY Mission: see S/1995/6 (4 January 1995), annex; S/1995/302 (13 April 1995), annex; S/1995/510 (25 June 1995), annex; S/1995/768 (6 September 1995), annex. The certifications were treated sceptically by the representative of Bosnia and Herzegovina and others, who consistently argued that the border had not been effectively closed and that fuel forms of military assistance were transiting the border: see, e.g., S/PV.3612 (21 December 1995), pp. 2-4 [arguing that a report of the Secretary-General dated 27 November 1995 on violations of international humanitarian law and human rights in Srebrenica and other towns had indicated that the certifications provided by the Co-Chairman of the ICFY had been based on inaccurate information, confirming that paramilitary forces, war matériel, special police forces, vehicles and other prohibited items had in fact been delivered from the Federal Republic of Yugoslavia (Serbia-Montenegro) to the Bosnian Serbs during the period in which the border was supposed to have been closed].

¹³⁴ S/RES 1022 (22 November 1995), operative paragraph 1.

¹³⁵ S/RES 1022 (22 November 1995), operative paragraph 4.

¹³⁶ S/RES 1022 (22 November 1995), operative paragraph 1.

¹³⁷ S/RES 1022 (22 November 1995), operative paragraph 3.

¹³⁸ S/RES 1022 (22 November 1995), operative paragraph 4.

sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) and dissolved the Yugoslavia Sanctions Committee.¹³⁹

7.6 Notable aspects of the FRY sanctions régime

The FRY sanctions régime was notable mainly due to its complexity, both in terms of the breadth of scope of the measures to be applied and the practical challenges of implementing sanctions against a country with many neighbours and located in the heart of a riparian economic community heavily reliant upon the ability to transport commodities and goods via an international river.¹⁴⁰ As with the implementation and enforcement of the arms embargo against the former Yugoslavia in general, an unprecedented number of regional actors was involved in ensuring the effective implementation of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro).¹⁴¹ In connection with that action, the Council invoked Chapter VIII of the Charter on a number of occasions.¹⁴²

The FRY sanctions régime contributed to the evolution of U.N. sanctions practice in a number of ways. First, it witnessed the first application of sanctions targeting sport, scientific and technological cooperation and cultural exchanges. Second, it provided the first

¹³⁹ S/RES/1074 (1 October 1996). The sanctions were terminated with immediate effect: operative paragraph 2. The dissolution of the 724 Committee was to take place once the Committee had finalized its report: operative paragraph 6.

¹⁴⁰ For discussion of the issues peculiar to a riparian target which is part of a multinational community, see: *Final Report of the 724 Committee*, above note 67, paragraphs 33–40.

¹⁴¹ When the Security Council provided for the suspension and ultimate termination of the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro) to address the situation in Bosnia and Herzegovina, it paid tribute to the significant contributions played by those various actors to the achievement of a negotiated peace: see S/RES/1022 (22 November 1995), operative paragraph 9. The Copenhagen Round-Table also opined that the “unprecedented formula of a coordinated, inter-institutional, international cooperative effort” to assist States in the observance of sanctions might have been a “decisive factor” in making the sanctions a “valuable and effective policy instrument”: *Report of the Copenhagen Round Table*, above note 115, paragraph 5.

¹⁴² See, e.g., S/RES/757, preambular paragraph 13; S/RES/787 (16 November 1992), operative paragraph 12; S/RES/820, preambular paragraph 10.

instance of the Council using a time-delay in order to provide the target with a window of time in which they could avoid falling subject to the additional sanctions.¹⁴³ Third, it gave rise to the first occasion on which the Council decided upon a time-delay in relation to the entry into operation of specific suspensions to a sanctions régime.¹⁴⁴ Fourth, it was the first time that the Council had bestowed responsibilities pertaining to a new sanctions régime upon a

¹⁴³ The Council first utilised a time-delay in April 1993, when it strengthened the sanctions: see S/RES/820 (17 April 1993), operative paragraphs 10, 11, providing that the additional sanctions to be applied against the Federal Republic of Yugoslavia (Serbia-Montenegro) would come into effect 9 days later, unless the Secretary-General were to report that the Bosnian Serb party had signed the peace plan and ceased its military attacks. Although, as noted above in section 6.6, the Council had earlier adopted sanctions that did not come into effect immediately as part of the Libya sanctions régime, on that occasion the Council had not explicitly provided for the possibility that the target could avoid the application of sanctions: see S/RES/748 (31 March 1992), operative paragraph 3.

¹⁴⁴ See S/RES/943 (23 September 1994), operative paragraph 1 [providing that the sanctions against civilian travel by aircraft and ferry, and those against sports, scientific cooperation and cultural exchanges, would be suspended upon the receipt of certification that the border between the Federal Republic of Yugoslavia (Serbia-Montenegro) and Bosnia and Herzegovina was indeed closed to sanctioned items].

pre-existing Sanctions Committee that had been established to oversee another sanctions régime. Fifth, it provided another example, in addition to those evident in the sanctions régimes against Haiti and Libya, of the Council adopting a strategy of employing suspensions of sanctions to induce additional compliance on the part of the target.¹⁴⁵ Sixth, it provided a rare endorsement of a recommendation relating to action in accordance with Article 50 of the Charter.¹⁴⁶

¹⁴⁵ For details relating to the manner in which the suspension of sanctions was utilised in the Haiti sanctions régime, see Appendix 10, below.

¹⁴⁶ See, e.g., S/RES/757, preambular paragraph 16; S/RES/843 (18 June 1993), preambular paragraphs 2, 3, operative paragraph 1. The Council endorsed the 724 Committee's recommendations with respect to the requests for special assistance submitted by 8 States and requested the Secretary-General to pursue their implementation. See: S/26056, 26282 and 26905: (6 July, 9 August and 20 December 1993): Letters dated 6 July, 9 August and 20 December 1993 from the President of the Security Council addressed to the Secretary-General, endorsing the recommendations of the 724 Committee concerning the applications for special assistance of Albania, Bulgaria, the former Yugoslav Republic of Macedonia, Hungary, Romania, Slovakia, Uganda and Ukraine.

8. *The first Liberia sanctions régime (“Liberia I”)*

The Security Council imposed sanctions against Liberia in late-1992, in an attempt to pressure the parties to a conflict within Liberia to implement a peace agreement. The sanctions consisted of an arms embargo, which was applied for almost a decade before being terminated in March 2001. The termination of the Liberian arms embargo did not represent the end of the Council’s sanctioning efforts against Liberia, however, as at the same time it terminated the embargo it also imposed a new sanctions régime in order to address the support being provided by the Liberian Government to rebels in Sierra Leone.¹

8.1 The constitutional basis for imposing sanctions against Liberia

In November 1992 the Security Council reaffirmed its belief that the Yamoussoukro IV Agreement, of 30 October 1991, offered the best framework for a peaceful resolution of the Liberian conflict,² regretted that the parties to the conflict had not respected or implemented that agreement,³ and determined that the deterioration of the situation in Liberia constituted a threat to international peace and security.⁴ The Council then invoked Chapter VII of the U.N. Charter and imposed sanctions against Liberia.⁵ In subsequent resolutions related to the Liberia sanctions régime, the Council again determined a threat to international peace and security,⁶ and invoked Chapter VII.⁷

¹ For the details relating to that sanctions régime, see Appendix 18, below.

² S/RES/788 (19 November 1992), preambular paragraph 2. The Yamoussoukro IV Accord had endeavoured to create the conditions necessary for the holding of free and fair elections. For details, see: S/24815 (17 November 1992), annex.

³ S/RES/788 (19 November 1992), preambular paragraph 4.

⁴ S/RES/788 (19 November 1992), preambular paragraph 5.

⁵ S/RES/788 (19 November 1992), operative paragraph 8.

⁶ S/RES/813 (26 March 1993), preambular paragraph 11.

8.2 The objective of the Liberia sanctions régime

The objective of the sanctions was to establish peace and stability in Liberia,⁸ and the Council set no explicit requirements for termination of the sanctions, stating that they would remain in place until it (the Council) decided otherwise.⁹ In fact, it was notable that the Council did not terminate the arms embargo in July 1997, after welcoming both the successful holding of presidential and legislative elections and the fact that the elections had been certified as “free and fair” by the Chairman of ECOWAS and the U.N. Secretary-General.¹⁰

8.3 The scope of the Liberia sanctions régime

The sanctions consisted of a general and complete embargo upon all deliveries of weapons and military equipment to Liberia.¹¹ Exempt from the embargo, however, were weapons and military equipment destined for the sole use of the peace-keeping forces of the Economic Community of West African States (ECOWAS).¹² Although the Security Council did not subsequently modify the scope of the Liberia sanctions régime, it frequently called upon States to comply with and implement the arms embargo,¹³ and to report any violations of the embargo to the Liberia Sanctions Committee.¹⁴

⁷ See, e.g., S/RES/813 (26 March 1993), operative paragraph 9; S/RES/985 (13 April 1995), preambular paragraph 2.

⁸ S/RES/788 (19 November 1992), operative paragraph 8.

⁹ S/RES/788 (19 November 1992), operative paragraph 8.

¹⁰ S/PRST/1997/41: Presidential statement of 30 July 1997. The joint statement of certification that the elections had been free and fair was contained in: S/1997/581 (24 July 1997), annex.

¹¹ S/RES/788 (19 November 1992), operative paragraph 8.

¹² S/RES/788 (19 November 1992), operative paragraph 9. This exemption was subsequently reaffirmed in S/RES/813 (26 March 1993), operative paragraph 13.

¹³ S/RES/813 (26 March 1993), operative paragraph 9. The Council reaffirmed this call in: S/RES/950 (21 October 1994), operative paragraph 6; S/RES/972 (13 January 1995), operative paragraph 6; S/RES/1001 (30 June 1995), operative paragraph 10; S/RES/1014 (15 September 1995), operative paragraph 11; S/RES/1020 (10 November 1995), operative paragraph 11;

8.4 The administration, monitoring and enforcement of the Liberia sanctions régime

During the course of the sanctions régime against Liberia, the Security Council bestowed responsibilities for the implementation, administration and enforcement of the sanctions upon a number of actors. At first the Council chose not to establish a Sanctions Committee at first, bestowing responsibilities instead upon ECOWAS. Subsequently it also bestowed responsibilities upon the United Nations Observer Mission in Liberia (UNOMIL). The Council eventually established a Sanctions Committee in April 1995, which subsequently assumed the major responsibility for oversight of the Liberia sanctions régime.

8.4.1 Regional organizations

Although the Security Council did not bestow explicit responsibilities upon regional organizations for the administration, implementation or enforcement of the arms embargo against Liberia, on multiple occasions it welcomed the contributions made by such organizations to resolve the situation in Liberia. The main organization to become involved in Liberia was ECOWAS, which sent a peace-keeping force – the ECOWAS Military Observer Group (ECOMOG) – to Liberia with a mandate to help implement the Yamoussoukro IV Agreement. On a number of occasions the Security Council commended

S/RES/1041 (29 January 1996), operative paragraph 14; S/PRST/1996/16: *Presidential statement of 9 April 1996*; S/PRST/1996/22: *Presidential statement of 6 May 1996*; S/RES/1059 (31 May 1996), operative paragraph 11; S/RES/1071 (30 August 1996), operative paragraph 12; S/RES/1083 (27 November 1996), operative paragraph 10; S/RES/1100 (27 March 1997), operative paragraph 9; S/RES/1116 (27 June 1997), operative paragraph 7.

¹⁴ S/RES/1001 (30 June 1995), operative paragraph 10; S/RES/1014 (15 September 1995), operative paragraph 11; S/RES/1020 (10 November 1995), operative paragraph 11; S/RES/1041 (29 January 1996), operative paragraph 14; S/PRST/1996/16: *Presidential statement of 9 April 1996*; S/RES/1059 (31 May 1996), operative paragraph 11; S/RES/1071 (30 August 1996), operative paragraph 12; S/RES/1083 (27 November 1996), operative paragraph 10; S/RES/1100 (27 March 1997), operative paragraph 9; S/RES/1116 (27 June 1997), operative paragraph 7.

the efforts of ECOWAS,¹⁵ and encouraged it to continue with its endeavours to help resolve the situation.¹⁶ The Council also demanded that all parties in Liberia cooperate fully with ECOWAS, with a view to ensure the full and prompt implementation of the Yamoussoukro IV Agreement.¹⁷ The Security Council also welcomed the role being played by the OAU in relation to the Liberian conflict.¹⁸ In June 1995, it urged the OAU to continue its collaboration with ECOWAS in promoting the cause of peace in Liberia.¹⁹

8.4.2 The United Nations Observer Mission in Liberia (UNOMIL)

In September 1993 the Council established the United Nations Observer Mission in Liberia (UNOMIL).²⁰ The purpose of UNOMIL was to observe the extent to which parties

¹⁵ See, e.g., S/RES/788 (19 November 1992), preambular paragraph 8, operative paragraph 1; S/RES/813 (26 March 1993), preambular paragraph 8, operative paragraph 2; S/RES/856 (10 August 1993), operative paragraph 6; S/RES/866 (22 September 1993), preambular paragraph 7; S/PRST/1994/9: *Presidential statement of 25 February 1994*; S/RES/911 (21 April 1994), preambular paragraph 5; S/PRST/1994/33: *Presidential statement of 13 July 1994*; S/RES/972 (13 January 1995), preambular paragraph 4; S/RES/1001 (30 June 1995), preambular paragraph 4; S/RES/1014 (15 September 1995), preambular paragraph 5; S/RES/1020 (10 November 1995), preambular paragraph 3; S/RES/1041 (29 January 1996), preambular paragraph 3; S/RES/1059 (31 May 1996), preambular paragraph 6; S/RES/1071 (30 August 1996), preambular paragraph 6; S/RES/1083 (27 November 1996), preambular paragraph 6; S/RES/1100 (27 March 1997), preambular paragraph 6; S/RES/1116 (27 June 1997), preambular paragraph 7.

¹⁶ S/RES/813 (26 March 1993), operative paragraph 4; S/RES/911 (21 April 1994), preambular paragraph 5.

¹⁷ S/RES/813 (26 March 1993), operative paragraph 10.

¹⁸ See, e.g., S/RES/788 (19 November 1992), preambular paragraph 9; S/RES/813 (26 March 1993), preambular paragraph 9, operative paragraph 3; S/RES/856 (10 August 1993), operative paragraph 7; S/RES/866 (22 September 1993), preambular paragraph 8; S/PRST/1994/9: *Presidential statement of 25 February 1994*;

¹⁹ S/RES/1001 (30 June 1995), operative paragraph 15; S/RES/1014 (15 September 1995), operative paragraph 15.

²⁰ S/RES/866 (22 September 1993), operative paragraph 2. UNOMIL's mandate was extended or adjusted on multiple occasions: see, e.g., [S/RES/911 (21 April 1994), operative paragraph 2; S/RES/950 (21 October 1994), operative paragraph 2; S/RES/972 (13 January 1995), operative paragraph 2; S/RES/985 (13 April 1995), operative paragraph 1; S/RES/1001 (30 June 1995), operative paragraph 3 [the Council also expressed its intent on that occasion, however, not to extend the mandate beyond September 1995 unless certain requirements – outlined in operative paragraph 4 – were complied with: operative paragraph 5]; S/RES/1014 (15 September 1995), operative paragraph 2; S/RES/1020 (10 November 1995), operative paragraph 2 [adjusting the mandate slightly]; S/RES/1041 (29 January 1996), operative paragraph 2; S/RES/1059 (31 May 1996), operative paragraph 2; S/RES/1071 (30 August 1996), operative paragraph 2; S/RES/1083 (27 November 1996), operative paragraph 4; S/RES/1100 (27 March 1997), operative paragraph

to the Liberian conflict were complying with a new Peace Agreement for Liberia – the “Cotonou Agreement”.²¹ In addition to general responsibilities in relation to verifying the implementation of the Cotonou Agreement, however, Council also entrusted UNOMIL with the responsibility for assisting in monitoring compliance with the arms embargo.²² In November 1995, when the Council adjusted UNOMIL’s mandate, it again requested the Operation to monitor compliance with the arms embargo and to verify its impartial application.²³

8.4.3 The Liberia Sanctions Committee

In January 1995 the Security Council expressed concern at reports of the continuing flow of arms into Liberia in violation of the arms embargo against Liberia.²⁴ In April 1995, noting its deep concern that arms continued to be imported into Liberia in violation of the embargo,²⁵ the Council decided to establish, in accordance with rule 28 of its provisional rules of procedure, a Sanctions Committee in order to oversee the administration and implementation of the embargo.²⁶ The Sanctions Committee (the “Liberia Sanctions Committee” or the “985 Committee”) was to report on its work to the Council with its

1; S/RES/1116 (27 June 1997), operative paragraph 1. Ultimately UNOMIL was terminated on 30 September 1997, as foreshadowed on the last occasion on which its mandate was extended: S/RES/1116 (27 June 1997), operative paragraph 1.

²¹ See, in general, S/RES/866 (22 September 1993), operative paragraph 3. For the text of the Cotonou Agreement, see: S/26272 (9 August 1993), annex. A number of other agreements were subsequently concluded, each with the aim of consolidating the previous Liberian peace agreements. See, e.g.: the Akosombo Agreement [S/1994/1174 (16 October 1994), annex]; the Accra Agreement of 21 December 1994 [S/1995/7 (5 January 1995), annexes I, II]; and the Abuja Agreement [S/1995/742 (28 August 1995), annex].

²² S/RES/866 (22 September 1993), operative paragraph 3(b).

²³ S/RES/1020 (10 November 1995), operative paragraph 2(c).

²⁴ S/RES/972 (13 January 1995), preambular paragraph 7; S/RES/985 (13 April 1995), preambular paragraph 5.

²⁵ S/RES/985 (13 April 1995), preambular paragraph 5.

²⁶ S/RES/985 (13 April 1995), operative paragraph 4.

observations and recommendations,²⁷ and to undertake the following tasks: (a) To seek from all States information regarding the action taken by them concerning the effective implementation of the embargo;²⁸ (b) To consider any information brought to its attention by States concerning violations of the embargo, and in that context to make recommendations to the Council on ways of increasing the effectiveness of the embargo;²⁹ and (c) To recommend appropriate measures in response to violations of the embargo and provide information on a regular basis to the Secretary-General for general distribution to Member States.³⁰ In January 1999, the Council expressed grave concern at reports that military support was being provided to rebels in Sierra Leone from the territory of Liberia, and it urged the 985 Committee to investigate violations of the arms embargo and to report to it with recommendations.³¹

The 985 Committee was dissolved in March 2001, when the Council terminated the Liberia sanctions régime and established a new sanctions régime to address the Liberian Government's support of rebels in Sierra Leone. In its six years of operation the 985 Committee held six formal meetings³² – an average of one meeting per year – and issued six annual reports.³³ The annual reports generally contained very few substantive observations

²⁷ S/RES/985 (13 April 1995), operative paragraph 4.

²⁸ S/RES/985 (13 April 1995), operative paragraph 4(a).

²⁹ S/RES/985 (13 April 1995), operative paragraph 4(b).

³⁰ S/RES/985 (13 April 1995), operative paragraph 4(c).

³¹ S/PRST/1999/1 (7 January 1999): *Presidential statement of 7 January 1999*.

³² This was the number of formal meetings held until by end of 1998, which was the last year in which there was an official record of the Committee having held meetings: *Index to Proceedings of the Security Council for 1998* (1999) United Nations, New York, p. xv.

³³ As with the annual reports of other Sanctions Committees, the annual reports of the 985 Committee have been circulated as official Security Council documents, in the form of an annex to a letter from the Chairman of the 985 Committee addressed to the President of the Security Council. The official document numbers and dates of circulation for the letters to which the reports are annexed are as follows: S/1996/72 (30 January 1996), annex: *Report of the Security Council Committee established pursuant to resolution 985 (1995) concerning Liberia*

or recommendations. Like a number of other Sanctions Committees, the 985 Committee noted that it did not possess an independent mechanism to monitor the embargo and therefore relied solely upon the cooperation of States and Organizations to provide it with pertinent information.³⁴ On one occasion the Committee took note of resolution 1196 (1998), in which the Council had reiterated the obligation of all States to implement their obligations relating to arms embargoes and encouraged Member States to adopt legislation making the violation of arms embargoes a criminal offence.³⁵ The Committee also expressed its intention to consider appropriate steps to improve the monitoring of the arms embargo, including communicating with relevant regional and subregional organizations.³⁶

8.4.4 The Secretary-General

In July 1994 the Council requested the Secretary-General to ensure that all information on violations of the arms embargo was made promptly available to it and publicised more widely.³⁷

8.4.5 States

The Security Council did not call upon States to undertake significant tasks related to the implementation or monitoring of sanctions. Nevertheless, it frequently called upon

(hereafter "*First report of the 985 Committee*") [containing a summary of the activities of the Committee from its establishment in 1993 until 31 December 1995]; S/1996/1077 (31 December 1996), annex: *Report of the 985 Committee for 1996*; S/1997/1026 (31 December 1997), annex: *Report of the 985 Committee for 1997*; S/1998/1220 (24 December 1998), annex: *Report of the 985 Committee for 1998*; S/1999/1301 (31 December 1999), annex: *Report of the 985 Committee for 1999*; S/2000/1233 (22 December 2000), annex: *Report of the 985 Committee for 2000*.

³⁴ See, e.g.: *Report of the 985 Committee for 1996*, *ibid*, paragraph 8; *Report of the 985 Committee for 1998*, *ibid*, paragraph 4; *Report of the 985 Committee for 1999*, *ibid*, paragraph 12; *Report of the 985 Committee for 2000*, *ibid*, paragraph 7.

³⁵ *Report of the 985 Committee for 1998*, above note 33, paragraph 4.

³⁶ *Report of the 985 Committee for 1998*, above note 33, paragraph 5.

³⁷ S/PRST/1994/33: *Presidential statement of 13 July 1994*.

States to comply with and implement the arms embargo,³⁸ to report any violations of the embargo to the Liberia Sanctions Committee,³⁹ and to take all actions necessary to ensure strict implementation of the embargo.⁴⁰

8.5 Termination of the Liberia sanctions régime

In December 2000, after a period of more than three years in which it did not adopt any resolutions or presidential statements in relation to the situation in Liberia, the Security Council condemned incursions that had been carried out into Guinea by rebel groups emanating from Sierra Leone and Liberia and called upon all States, and in particular Liberia, to refrain from providing military support or taking any other action that might further destabilize the situation on the border between Guinea, Liberia and Sierra Leone.⁴¹ Then, in March 2001, the Council took action to address the Liberian Government's support of rebels in Sierra Leone, which somewhat paradoxically resulted in the termination

³⁸ S/RES/813 (26 March 1993), operative paragraph 9. The Council reaffirmed this call in: S/RES/950 (21 October 1994), operative paragraph 6; S/RES/972 (13 January 1995), operative paragraph 6; S/RES/985 (13 April 1995), operative paragraph 4 (urging all States, and in particular neighbouring States, to comply fully with the embargo); S/RES/1001 (30 June 1995), operative paragraph 10; S/RES/1014 (15 September 1995), operative paragraph 11; S/RES/1020 (10 November 1995), operative paragraph 11; S/RES/1041 (29 January 1996), operative paragraph 14; S/PRST/1996/16: *Presidential statement of 9 April 1996*; S/PRST/1996/22: *Presidential statement of 6 May 1996*; S/RES/1059 (31 May 1996), operative paragraph 11; S/RES/1071 (30 August 1996), operative paragraph 12; S/RES/1083 (27 November 1996), operative paragraph 10; S/RES/1100 (27 March 1997), operative paragraph 9; S/RES/1116 (27 June 1997), operative paragraph 7.

³⁹ S/RES/1001 (30 June 1995), operative paragraph 10; S/RES/1014 (15 September 1995), operative paragraph 11; S/RES/1020 (10 November 1995), operative paragraph 11; S/RES/1041 (29 January 1996), operative paragraph 14; S/PRST/1996/16: *Presidential statement of 9 April 1996*; S/RES/1059 (31 May 1996), operative paragraph 11; S/RES/1071 (30 August 1996), operative paragraph 12; S/RES/1083 (27 November 1996), operative paragraph 10; S/RES/1100 (27 March 1997), operative paragraph 9; S/RES/1116 (27 June 1997), operative paragraph 7.

⁴⁰ S/RES/1071 (30 August 1996), operative paragraph 12; S/RES/1083 (27 November 1996), operative paragraph 10; S/RES/1100 (27 March 1997), operative paragraph 9; S/RES/1116 (27 June 1997), operative paragraph 7.

⁴¹ S/PRST/2000/41: *Presidential statement of 21 December 2000*.

of the arms embargo against Liberia.⁴² In resolution 1343 the Council noted that the conflict in Liberia had been resolved, that national elections had taken place within the framework of the Yamoussoukro IV Agreement, and that the Final Communiqué of the informal consultative group meeting of the ECOWAS Committee of Five on Liberia had been implemented.⁴³ The Council then decided to terminate the embargo and dissolve the Liberia Sanctions Committee.⁴⁴ Resolution 1343 did not represent the end of Council action in relation to Liberia, however. The Council also used resolution 1343 to impose a new sanctions regime against Liberia in order to address its support of the Rebel United Front in Sierra Leone in violation of the sanctions regime against Sierra Leone.⁴⁵

8.6 Notable aspects of the Liberia sanctions régime

On the whole the Liberian sanctions régime was not particularly noteworthy. Although the Council's practice in relation to the situation in Liberia witnessed the first instance in which there was major cooperation in peace-keeping between a regional organization and the United Nations, the Liberian sanctions régime itself contributed little to the evolution of sanctions practice. Its main contribution occurred upon termination, when it became the first sanctions régime to be terminated in the same Security Council resolution that applied a new sanctions régime against the same target. It did, however, provide the longest delay – three and a half years – between the establishment of a sanctions régime and the creation of a Sanctions Committee to oversee that régime's administration. The Liberia

⁴² S/RES/1343 (7 March 2001).

⁴³ S/RES/1343 (7 March 2001), section A, preambular paragraph 2.

⁴⁴ S/RES/1343 (7 March 2001), section A, operative paragraph 1.

⁴⁵ For an overview of the subsequent sanctions regime against Liberia, see Appendix 18, below. For discussion of the sanctions regime against Sierra Leone, see Appendix 4, below.

Sanctions Committee, once created, subsequently distinguished itself largely on account of its low level of activity, meeting six times in six years for an average of one meeting per year.

9. *The Bosnian Serb sanctions régime*

The Security Council applied sanctions against the Bosnian Serb party in April 1993, in the aftermath of a series of attacks by Bosnian Serb paramilitary forces in eastern Bosnia, including against the town of Srebrenica. The sanctions régime consisted of comprehensive sanctions, with the aim of inducing the Bosnian Serbs to participate in the Bosnian peace plan. The sanctions were ultimately terminated in October 1996, when free and fair elections had been held in Bosnia and Herzegovina.

9.1 The constitutional basis for imposing sanctions against the Bosnian Serb party

On 17 April 1993 the Security Council expressed grave concern at the refusal of the Bosnian Serb party to participate in the Bosnian peace plan,¹ expressed determination to strengthen the implementation of its earlier relevant resolutions,² and noted that it was acting under Chapter VII,³ before imposing sanctions against the Bosnian Serbs.⁴ In subsequent

¹ S/RES/820 (17 April 1993), operative paragraph 3.

² S/RES/820 (17 April 1993), Section B, preambular paragraph 1.

³ S/RES/820 (17 April 1993), Section B, preambular paragraph 2. Interestingly the Council did not make an explicit determination of a threat to or breach of international peace and security before imposing sanctions. The reason for this oversight might be that the sanctions against the Bosnian Serbs were applied against the background of the strengthening of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro). As the Council had already identified a threat to international peace and security in relation to that sanctions régime, perhaps it did not consider it necessary to make another explicit determination. It is also possible that no explicit determination was made because the Council had long considered the situation in Bosnia and Herzegovina to represent a threat to international peace and security. Another possibility is that the Council considered the invocation of Chapter VII to be sufficient to imply the invocation of Article 39 and hence to amount to an implicit determination of a threat to international peace and security. For further discussion of this potential interpretation of the Council's decision-making process, see section 15.1, below [discussing the Council's failure to make an explicit determination of a threat to international peace and security before imposing sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) to address the situation in Kosovo]. In any event, the Council subsequently determined the existence of a threat to international peace and security in connection with the sanctions régime against the Bosnian Serbs: see S/RES/942 (23 September 1994), preambular paragraph 7.

resolutions related to the Bosnian Serb sanctions régime, the Council determined that the situation in the former Yugoslavia continued to constitute a threat to international peace and security⁵ and invoked Chapter VII of the Charter.⁶

9.2 The objective of the Bosnian Serb sanctions régime

When the Security Council initially established the Bosnian Serb sanctions régime, it tied the termination of the sanctions to the signing and implementation of the Bosnian peace plan, thus making it clear that that was the régime's objective.⁷ In September 1994, when the sanctions were strengthened, the objective was modified subtly, becoming the unconditional acceptance by the Bosnian Serb party of the Bosnian territorial settlement.⁸ In November 1995 the Council again modified the explicit objective of the sanctions slightly, making the suspension of the sanctions contingent upon the withdrawal of Bosnian Serbs forces behind zones of separation established in the Bosnia Peace Agreement and tying the ultimate termination of the sanctions to the occurrence of free and fair elections in Bosnia and Herzegovina.⁹

9.3 The scope of the Bosnian Serb sanctions régime

The sanctions régime against the Bosnian Serbs was initially simple but comprehensive. The Council required States to prevent the import to, export from, and transshipment through areas under the control of the Bosnian Serb forces, of supplies other

⁴ S/RES/820 (17 April 1993), operative paragraph 12.

⁵ S/RES/942 (23 September 1994), preambular paragraph 7; S/RES/1022 (22 November 1995), preambular paragraph 10.

⁶ S/RES/942 (23 September 1994), preambular paragraph 8; S/RES/1022 (22 November 1995), preambular paragraph 11; S/RES/1074 (1 October 1996), preambular paragraph 9.

⁷ S/RES/820 (17 April 1993), section B, operative paragraphs 10, 31.

⁸ S/RES/942 (23 September 1994), operative paragraphs 3, 21.

than essential humanitarian supplies, including medical supplies and foodstuffs distributed by international humanitarian agencies.¹⁰

In September 1994, the Council expanded the sanctions to incorporate a range of additional measures, including economic, financial and targeted travel sanctions.¹¹ On the economic front, States were required to prevent economic activities from taking place in their territories if such activities would involve the participation of an entity that was owned, controlled or incorporated by a person or entity from those parts of Bosnia and Herzegovina under the control of Bosnian Serb forces or if those activities would involve the participation of an agent of such entities or people.¹² The Council also prohibited all commercial river traffic from entering the ports of those areas of the Republic of Bosnia and Herzegovina under the control of the Bosnian Serb forces.¹³

⁹ S/RES/1022 (22 November 1995), operative paragraphs 2, 4.

¹⁰ S/RES/820 (17 April 1993), operative paragraph 12. Interestingly, the Council did not explicitly articulate the items for which import to, export from and transshipment through the areas of Bosnia and Herzegovina under the control of Bosnian Serb forces would be prohibited – neglecting even to mention a word such as “commodities”, “products”, “goods” or “supplies”. It is likely, however, given the context of the prohibition and considering the Council’s past practice, that the intention was to prohibit the flow to and from the Bosnian Serbs of products and commodities. Another indicator that the sanctions were intended to be comprehensive was that the Council specified that exemptions would be permitted from the sanctions for “essential humanitarian supplies including medical supplies and foodstuffs distributed by humanitarian agencies”, provided that such exemptions were authorised by the Government of the Republic of Bosnia and Herzegovina: see also operative paragraph 12.

¹¹ The Council also outlined voluntary diplomatic/representative sanctions, calling upon States to desist from talks with the leadership of the Bosnian Serb party until it had accepted the proposed settlement in full: S/RES/942 (23 September 1994), operative paragraph 6.

¹² S/RES/942 (23 September 1994), operative paragraph 7. Exemptions could be made to these prohibitions where: i) the State in which the activities were taking place verified, on a case-by-case basis, that the activities concerned would not result in the transfer of property to entities owned or controlled by persons or entities from, or constituted or incorporated in, those areas of the Bosnia and Herzegovina under the control of Bosnian Serb forces; or ii) the activities involved the provision of medical supplies, foodstuffs, or products for essential humanitarian needs: *ibid.*

¹³ S/RES/942 (23 September 1994), operative paragraph 15. Exemptions could be made to this prohibition when authorised on a case-by-case basis by the sanctions committee or by the Government of the Republic of Bosnia and Herzegovina, or in the case of *force majeure*: *ibid.*

On the financial front, States were required to freeze any funds or other financial assets or resources held within their territories if they belonged to an entity that was owned, controlled or incorporated by a person or entity from those parts of Bosnia and Herzegovina under the control of Bosnian Serb forces, or to an agent of such entities or people.¹⁴ States were also required to ensure that any payments accruing in their territories for entities doing business in, or owned, controlled or incorporated by persons or entities from those areas of Bosnia and Herzegovina under the control of the Bosnian Serb forces, would be paid only into frozen accounts.¹⁵ Furthermore, the Council required States to prohibit the provision of services, both financial and non-financial, to any person or body for the purposes of business being carried on in those areas of Bosnia and Herzegovina under the control of Bosnian Serb forces.¹⁶

The targeted travel sanctions applied by the Council required States to prevent the entry to their territories of: (a) Members of the authorities in those areas of Bosnia and Herzegovina under the control of the Bosnian Serb forces and those acting on behalf of such authorities;¹⁷ (b) Officers of the Bosnian Serb military and paramilitary forces and those acting on behalf of such forces;¹⁸ (c) Persons found to have provided financial, material, logistical, military or other tangible support to Bosnian Serb forces in violation of the sanctions;¹⁹ and (d) Persons in or resident of those areas of the Republic of Bosnia and

¹⁴ S/RES/942 (23 September 1994), operative paragraph 11. Exemptions could be made for payments that were being made in connection with the import of permitted exemptions, and for payments that were authorised by the Government of the Republic of Bosnia and Herzegovina: see *ibid.*

¹⁵ S/RES/942 (23 September 1994), operative paragraph 12.

¹⁶ S/RES/942 (23 September 1994), operative paragraph 13.

¹⁷ S/RES/942 (23 September 1994), operative paragraph 14(a).

¹⁸ S/RES/942 (23 September 1994), operative paragraph 14(a).

¹⁹ S/RES/942 (23 September 1994), operative paragraph 14(b).

Herzegovina under the control of Bosnian Serb forces who were found to have violated or contributed to the violation of the sanctions against the Bosnian Serb party.²⁰ The Council also provided, however, for the possibility that exemptions might be provided from the travel sanctions for purposes consistent with the peace process.²¹

9.4 The administration, monitoring and enforcement of the Bosnian Serb sanctions régime

The Council bestowed responsibility for the administration, implementation and enforcement of the sanctions regime against the Bosnian Serb party upon a range of actors, including the 724 Sanctions Committee, the Secretary-General, States, the Sanctions Assistance Missions, and the ICFY and EC Monitoring Missions.

9.4.1 The 724 Committee

When the Security Council established the sanctions régime against the Bosnian Serbs, it bestowed responsibilities upon the 724 Committee, which had originally been established in order to oversee the administration of the arms embargo against the States of the former Yugoslavia.²² The Council thus decided that the 724 Committee would assume the following tasks in relation to the sanctions régime against the Bosnian Serbs: (a) receiving notifications regarding the provision of supplies intended strictly for medical purposes and foodstuffs;²³ (b) deciding upon applications for exemptions from the sanctions for the provision of commodities or products for essential humanitarian needs;²⁴ (c) receiving and processing on a case-by-case basis applications for exemptions from the sanctions for the

²⁰ S/RES/942 (23 September 1994), operative paragraph 14(c).

²¹ S/RES/942 (23 September 1994), operative paragraph 14.

²² For information relating to the establishment of the 724 Committee, see section 4.4, above.

²³ S/RES/942 (23 September 1994), operative paragraph 7(ii)(b).

provision of services necessary for humanitarian or other exceptional purposes;²⁵ (d) establishing and maintaining an updated list, based on information provided by States and competent regional organizations, of the persons to whom the targeted travel sanctions would apply;²⁶ and (e) receiving and processing, on a case-by-case basis, applications for exemptions from the prohibition upon the movement of commercial riverine traffic.²⁷

As noted above in the overviews of the sanctions régimes against the former Yugoslavia and the Federal Republic of Yugoslavia (Serbia-Montenegro),²⁸ the 724 Committee held 142 formal meetings during its tenure.²⁹ Only the Committee's *Final Report* was issued after the establishment of the sanctions régime against the Bosnian Serbs.³⁰ In observations relevant to the Bosnian Serb sanctions régime in particular, the Committee noted that, in response to requests from a number of countries and UNESCO, it had clarified that educational, cultural and other activities in Bosnian Serb-controlled areas should be undertaken with the prior authorisation of the Government of Bosnia and Herzegovina and the Committee itself.³¹ The Committee also noted that it had been unable to establish a list of individuals whose travel was prohibited.³² It had, nevertheless, received and approved requests from Canada and the United States to authorize entry into their

²⁴ *Ibid.*

²⁵ S/RES/942 (23 September 1994), operative paragraph 13.

²⁶ S/RES/942 (23 September 1994), operative paragraph 14.

²⁷ S/RES/942 (23 September 1994), operative paragraph 15.

²⁸ See sections 4.4 and 7.4, above.

²⁹ The 142nd and last meeting of the Committee took place on 19 September 1996: *Index to Proceedings of the Security Council for 1996* (1997) United Nations, New York, p. xiii.

³⁰ S/1996/946 (15 November 1996), annex: *Final Report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia*, (hereafter '*Final Report of the 724 Committee*') [containing a summary of the Committee's activities from January 1993 until the termination of the sanctions régime on 1 October 1996].

³¹ *Final Report of the 724 Committee*, *ibid.*, paragraph 62.

³² *Final Report of the 724 Committee*, above note 30, paragraph 63.

territories of certain individuals for participation in legal proceedings and the Dayton peace talks.³³

9.4.2 The Secretary-General

During the course of the sanctions régime against the Bosnian Serbs, the Security Council requested the Secretary-General to undertake a number of tasks with direct relevance to the Bosnian Serb sanctions.³⁴ Those tasks included the following: (a) Reporting to the Council if within nine days of the adoption of resolution 820 (1993) the Bosnian Serbs had signed and begun to implement the peace plan, in which case the sanctions would not be imposed;³⁵ (b) In the event that the Bosnian Serbs did sign and begin to implement the peace process, thus meaning that the sanctions were not in fact imposed, to report to the Council if the Bosnian Serbs had renewed military attacks or failed to comply with the peace plan, in which case the sanctions would immediately come into effect;³⁶ and (c) Once the sanctions had been imposed, to report to the Council if the Bosnian Serbs had signed the peace plan and was implementing its obligations in good faith, in which case the Council would review the sanctions with a view to lifting them gradually.³⁷

9.4.3 States

On top of the general obligation flowing from the establishment of the sanctions régime against the Bosnian Serbs to do everything in their power to implement the sanctions

³³ *Ibid.*

³⁴ Due to the close relationship between the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro) and the sanctions régime against the Bosnian Serbs, a number of these tasks are also listed above in section 7.4.

³⁵ S/RES/820 (17 April 1993), operative paragraph 10.

³⁶ S/RES/820 (17 April 1993), operative paragraph 11.

³⁷ S/RES/820 (17 April 1993), operative paragraph 31.

within their own jurisdictions, States were also requested, authorized or required by the Security Council to take various actions to implementation, monitor or enforce the sanctions. As with the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), the Council's additional requests in relation to the Bosnian Serb sanctions régime were sometimes addressed to States in general and sometimes directed at States either neighbouring or located in the region surrounding Bosnia and Herzegovina.

i. States in general

When the sanctions were first established against the Bosnian Serbs, the Council required States in general to detain vessels, freight vehicles, rolling stock, aircraft and cargoes suspected of having violated the sanctions.³⁸ At the same time, the Council also requested or called upon States in general: to bring proceedings against persons and entities violating the sanctions and to impose appropriate penalties;³⁹ and to provide such assistance as was required by riparian States to ensure that shipping on the Danube did not violate the sanctions.⁴⁰

In September 1994, when it strengthened the sanctions against the Bosnian Serbs, the Council required States to prevent shipments of commodities and products destined for those areas under the control of Bosnian Serb forces from violating the sanctions by ensuring that they were physically inspected by the Sanctions Assistance Missions or by competent national authorities at loading to verify and seal their contents or that the contents could be

³⁸ S/RES/820 (17 April 1993), operative paragraph 25. In the same operative paragraph the Council noted that detained vessels, freight vehicles, rolling stock, aircraft and cargoes might be subject to forfeit to the detaining State.

³⁹ S/RES/820 (17 April 1993), operative paragraph 19.

⁴⁰ S/RES/820 (17 April 1993), operative paragraph 17.

easily verified.⁴¹ At the same time the Council also required States from which commodities or products were to be shipped to areas under the control of the Bosnian Serbs in accordance with the permitted exemptions from the sanctions, to report the source of funds from which payment was to be made to the 724 Committee.⁴² In addition, States were also required to take steps to prevent the diversion of benefits to areas the control of Bosnian Serb forces from other places, and in particular from the United Nations Protected Areas in Croatia.⁴³

In April 1995, the Council requested Member States to make available the necessary resources to strengthen the ICFY Mission's capacity to carry out its tasks, which included certifying that the border between the Federal Republic of Yugoslavia (Serbia-Montenegro) and areas of Bosnia and Herzegovina under the control of the Bosnian Serbs remained closed.⁴⁴

ii. Riparian and Neighbour States

When the sanctions were imposed against the Bosnian Serbs, the Security Council effectively requested the Government of Bosnia and Herzegovina to play a monitoring role by providing that goods and commodities could be imported to, exported from, or transhipped through the areas under the control of the Bosnian Serbs when authorized by the Government of Bosnia and Herzegovina.⁴⁵ At the same time, the Council also called

⁴¹ S/RES/942 (23 September 1994), operative paragraph 16.

⁴² S/RES/942 (23 September 1994), operative paragraph 17.

⁴³ S/RES/942 (23 September 1994), operative paragraph 18.

⁴⁴ S/RES/988 (21 April 1995), operative paragraph 6. The ICFY Mission was established to monitor and certify that the Federal Republic of Yugoslavia (Serbia-Montenegro) was adhering to its commitment to close its border with the areas of Bosnia and Herzegovina under the control of the Bosnian Serbs to all but foodstuffs and medical and humanitarian supplies. For discussion of the Mission's activities, see sections 7.4 and 9.4, below.

⁴⁵ S/RES/820 (17 April 1993), operative paragraph 12.

upon riparian States to ensure that cabotage traffic along the Danube river between Vidin/Calafat and Mohacs was adequately monitored so that no vessels suspected of having violated the sanctions were permitted to pass,⁴⁶ and reaffirmed the responsibility of riparian States to take the measures necessary to ensure that shipping on the Danube did not violate the sanctions, including taking action to halt shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the sanctions.⁴⁷

In May 1995 the Council requested the Government of Romania, with the assistance of the EU/OSCE Sanctions Assistance Missions, to monitor the use of Romanian locks while repairs were being carried out to locks on the Serbian side of the river, including if necessary by inspections of the vessels and their cargo, in order to ensure that no goods were loaded or unloaded during the passage by the vessels through the locks of the Iron Gates I system.⁴⁸ The Council also requested Romania to deny passage through the locks on its bank of the Danube to any vessel suspected to have violated sanctions.⁴⁹

9.4.4 Regional organizations and other regional entities involved in the implementation and enforcement of the sanctions⁵⁰

As with the implementation of the sanctions régimes against the former Yugoslavia and the Federal Republic of Yugoslavia (Serbia-Montenegro), regional organizations played a significant role in the implementation of the sanctions against the Bosnian Serbs. When the

⁴⁶ S/RES/820 (17 April 1993), operative paragraph 16.

⁴⁷ S/RES/820 (17 April 1993), operative paragraph 17.

⁴⁸ S/RES/992 (11 May 1995), operative paragraph 3.

⁴⁹ S/RES/992 (11 May 1995), operative paragraph 4.

⁵⁰ For good summaries of the activities undertaken by regional organizations and other regional entities to implement and enforce the sanctions, see: *Final Report of the 724 Committee*, above note 30, paragraph 79; S/1996/776 (24 September 1996), annex: *Report of the Copenhagen Round Table on United Nations Sanctions in the Case of the Former Yugoslavia* (hereafter “*Report of the Copenhagen Round Table*”), paragraphs 25-60.

Security Council imposed sanctions against the Bosnian Serbs, it reaffirmed that the authority granted to States, acting nationally or through regional agencies or arrangements, to use such measures as necessary to ensure that maritime and riparian shipping was not violating sanctions, applied also to the sanctions against the Bosnian Serbs.⁵¹

The main entities with particular responsibilities for facilitating the implementation of the sanctions were the EC/EU/CSCE/OSCE Sanctions Assistance Missions (SAMs)⁵² and the Mission of the International Conference on the former Yugoslavia established to monitor the border between the Federal Republic of Yugoslavia (Serbia-Montenegro) and Bosnia and Herzegovina.

The SAMs consisted largely of customs officers, who were deployed in States neighbouring the Federal Republic of Yugoslavia (Serbia-Montenegro) to help prevent the violation of the sanctions. In April 1993, when it first established the sanctions against the Bosnian Serbs, the Council welcomed the role of the SAMs in support of the implementation of the sanctions and invited it to work in close cooperation with the 724 Committee.⁵³ In September 1994, when it strengthened the sanctions, the Council further acknowledged the role being played by the SAMs in the implementation of the sanctions against the Bosnian Serbs by requiring States to prevent shipments of commodities and products destined for those areas under the control of Bosnian Serb forces from violating

⁵¹ See: S/RES/820 (17 April 1993), operative paragraph 29 (reaffirming the authority of States acting under paragraph 12 of resolution 787 (1992) to use such measures commensurate with the specific circumstances as may be necessary under the authority of the Security Council to enforce resolution 820 (1993) itself).

⁵² The SAMs consisted largely of customs officers, who were deployed in States neighbouring the Federal Republic of Yugoslavia (Serbia-Montenegro) to help prevent the violation of the sanctions. The Council welcomed the role of the SAMs in support of the implementation of the sanctions and invited it to work in close cooperation with the 724 Committee in.

the sanctions by ensuring that they were physically inspected by the Sanctions Assistance Missions or by competent national authorities to verify and seal their contents.⁵⁴

The ICFY Mission was established in late-1994, in order to verify that the border between the Federal Republic of Yugoslavia (Serbia-Montenegro) and areas of Bosnia and Herzegovina under the control of the Bosnian Serbs was closed to all goods except those exempt from the sanctions against the Bosnian Serbs.⁵⁵ Although a major consequence of the Mission's activities was the effective implementation of the sanctions against the Bosnian Serbs, its actions were also directly connected with the implementation of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro), for the suspension of aspects of the sanctions against the Federal Republic of Yugoslavia (Serbia-Montenegro) was contingent upon the Mission certifying that the border closure was being maintained.⁵⁶ The ICFY Mission indeed submitted a number of reports certifying that the border closure was being maintained by the Federal Republic of Yugoslavia (Serbia-Montenegro), on the basis of which the Council subsequently extended the suspensions.⁵⁷ Although the ICFY

⁵³ S/RES/820 (17 April 1993), operative paragraph 20. For further details relating to the work of the SAMs, see: *Final Report of the 724 Committee*, above note 30, paragraph 79(a); *Report of the Copenhagen Round Table*, above note 50, paragraphs 32-35.

⁵⁴ S/RES/942 (23 September 1994), operative paragraph 16.

⁵⁵ See, e.g., S/1994/1074 (19 September 1994), annex: *Report of the Co-Chairmen of the Steering Committee of the International Conference on the former Yugoslavia (ICFY) on the establishment and commencement of operations of an ICFY Mission to the Federal Republic of Yugoslavia (Serbia-Montenegro)*. The idea of establishing an observer mission along the border between the Federal Republic of Yugoslavia (Serbia-Montenegro) and Bosnia and Herzegovina had been raised sometime earlier in a letter dated 7 July 1993 from the President of the Security Council to the Secretary-General, in which the President of the Security Council invited the Secretary-General to contact Member States in order to establish whether they were prepared, individually or through regional organizations or arrangements to make personnel available to act as observers along the borders of Bosnia and Herzegovina: S/26049 (7 July 1993): *Letter dated 7 July 1993 from the President of the Security Council addressed to the Secretary-General*.

⁵⁶ For further details, see section 7.4, above.

⁵⁷ The certifications by the Co-Chairmen, which were transmitted to the Council by the Secretary-General, were based upon the observations of the ICFY Mission: see S/1995/6 (4 January 1995),

Mission's certifications that the border was being effectively closed were greeted with scepticism in some quarters,⁵⁸ the 724 Committee observed in its *Final Report* that the Mission had played an important role in monitoring the application of the sanctions against the Bosnian Serbs.⁵⁹

9.5 Suspension and termination of the Bosnian Serb sanctions régime

The Council provided for the possibility that the sanctions against the Bosnian Serb party might be suspended in resolution 1022 - the same resolution which suspended the sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro).⁶⁰ But whereas the suspensions to the regime against Federal Republic of Yugoslavia (Serbia and Montenegro) were to apply with immediate effect,⁶¹ the suspensions to the regime against the Bosnian Serb party were conditional upon the withdrawal of Bosnian Serb forces behind the zones of separation established in the Peace Agreement,⁶² and upon the implementation by the Bosnian Serb forces of its obligations under the Peace Agreement.⁶³ The condition for termination of the regime, which had begun as the signing of the Peace plan by the

annex; S/1995/302 (13 April 1995), annex; S/1995/510 (25 June 1995), annex; S/1995/768 (6 September 1995), annex.

⁵⁸ The certifications were treated sceptically by the Ambassador of Bosnia and Herzegovina to the United Nations, who consistently argued that the border had not been effectively closed and that fuel forms of military assistance were transiting the border: see, e.g., S/PV.3612 (21 December 1995), pp. 2-4 [arguing that a report of the Secretary-General dated 27 November 1995 on violations of international humanitarian law and human rights in Srebrenica and other towns had indicated that the certifications provided by the Co-Chairman of the ICFY had been based on inaccurate information, confirming that paramilitary forces, war matériel, special police forces, vehicles and other prohibited items had in fact been delivered from the Federal Republic of Yugoslavia (Serbia-Montenegro) to the Bosnian Serbs during the period in which the border was supposed to have been closed].

⁵⁹ *Final Report of the 724 Committee*, above note 30, paragraph 79(d).

⁶⁰ S/RES/1022 (22 November 1995).

⁶¹ S/RES/1022 (22 November 1995), operative paragraph 1.

⁶² S/RES/1022 (22 November 1995), operative paragraph 2.

Bosnian Serb party,⁶⁴ and was then modified to the unconditional acceptance by the Bosnian Serb party of the territorial settlement,⁶⁵ became with resolution 1022 the occurrence of free and fair elections in Bosnia and Herzegovina in accordance with the Peace Agreement.⁶⁶ The sanctions against the Bosnian Serbs party were suspended on 27 February 1996, after the Security Council was informed that the Bosnian Serb forces had withdrawn from the zones of separation established in the Peace Agreement.⁶⁷ The sanctions were ultimately terminated on October 1 1996, after there had been free and fair elections.⁶⁸

9.6 Notable aspects of the Bosnian Serb sanctions régime

The most noteworthy aspect of the Bosnian Serb sanctions régime was that it constituted the first occasion in which the Security Council applied sanctions against a sub-State entity.⁶⁹ Although the framework outlined in Chapter VII, and more particularly Article 41, of the United Nations Charter did not exclude the possibility that sanctions might be applied against targets other than States, the application of sanctions against the Bosnian Serbs represented a novel development in sanctions practice. Since the Bosnian Serb sanctions régime was established, the Council has again applied sanctions against sub-State or non-State actors on multiple occasions, as part of the sanctions régimes against Angola

⁶³ S/RES/1022 (22 November 1995), operative paragraph 3.

⁶⁴ S/RES/820 (17 April 1993), operative paragraphs 10, 31: see note 7, above.

⁶⁵ S/RES/942 (23 September 1994), operative paragraphs 3, 21.

⁶⁶ S/RES/1022 (22 November 1995), operative paragraph 4.

⁶⁷ *Final Report of the 724 Committee*, above note 30, paragraph 4(h) [referring to letters that the 724 Committee had sent to States and international organizations: SCA/8/96(2); SCA/8/96(2-1)].

⁶⁸ S/RES/1074 (1 October 1996), operative paragraph 2.

⁶⁹ Although it is arguable that the Southern Rhodesia sanctions régime was imposed against a sub-State entity, the target nevertheless was in de-facto control of the territories and government of a State, meaning that the sanctions were effectively, if not technically, imposed against a State-like entity. In the case of the Bosnian Serbs, however, the target was not in a

(UNITA), Rwanda, Sierra Leone and Afghanistan/the Taliban/Al Qaeda.⁷⁰ In other respects, the Bosnian Serb sanctions régime shared a number of noteworthy characteristics also evident in the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), including providing the first instance of the Council using a time-delay in order to provide the target with a window of time in which they could avoid falling subject to the additional sanctions,⁷¹ and providing another occasion on which the Council bestowed responsibilities pertaining to a new sanctions régime upon a pre-existing Sanctions Committee that had been established to oversee another sanctions régime. In addition, as with the implementation and enforcement of the arms embargo against the former Yugoslavia in general and the sanctions régime against the Federal Republic of Yugoslavia (Serbia-Montenegro), a substantial number of regional actors was involved in ensuring the effective implementation of the sanctions against the Bosnian Serbs.

position of de-facto control over the territories and government of a State. Rather, the Bosnian Serbs controlled certain pockets of territory within a State.

⁷⁰ For further details relating to those sanctions régimes, see appendices 11, 12, 14 and 16, respectively, below.

⁷¹ S/RES/820 (17 April 1993), operative paragraphs 10, 11, providing that the sanctions against the Bosnian Serbs, contained in operative paragraph 12, would come into effect 9 days later, unless the Secretary-General were to report that the Bosnian Serbs had signed the peace plan and ceased its military attacks. Interestingly, however, the Council did not employ a time-delay in September 1994, when it strengthened the Bosnian Serb sanctions régime: see S/RES/942 (23 September 1994), operative paragraphs 6, 7, 11-15.

10. The Haiti sanctions régime

The Security Council imposed sanctions against Haiti in June 1993 in order to bring about the reinstatement of the democratically elected government of President Jean-Bertrand Aristide. The sanctions régime initially consisted of targeted petroleum, arms and financial sanctions. The sanctions were suspended for a short period, from 27 August to 13 October 1993, when it appeared that the *de facto* authorities in Haiti were complying with the Council's demands in relation to the implementation of two peace agreements – “the Governor's Island Agreement” and “the New York pact”. They were reimposed, however, once it became clear that the compliance of the *de facto* authorities had been only partial and temporary. In May 1994 the Council strengthened the sanctions considerably, imposing aviation, travel and economic sanctions to make the sanctions régime comprehensive. The sanctions were ultimately terminated on 15 October 1994, upon the return to Haiti of President Aristide.

10.1 The constitutional basis for imposing sanctions against Haiti

In June 1993 the Security Council received a letter from the representative of Haiti to the United Nations requesting that it make universal and mandatory the trade embargo against Haiti which had been recommended by the Organization of American States (OAS).¹ In response, the Council adopted resolution 841 (1993), in which it expressed its strong support for the efforts made by the U.N. Secretary-General, the OAS Secretary-

¹ S/25958 (16 June 1993): *Letter dated 7 June 1993 from the Representative of Haiti addressed to the President of the Security Council.*

General and the international community to reach a political solution to the crisis in Haiti,² noted with concern the incidence of humanitarian crises, including mass displacements of population, becoming or aggravating threats to international peace and security,³ and stated that it deplored the fact that the legitimate Government of Jean-Bertrand Aristide had not been reinstated.⁴ The Council then considered that the request from the representative of Haiti warranted “exceptional” measures by the Council in support of the efforts that had already been taken to resolve the situation within the OAS framework,⁵ and it determined that, in those unique and exceptional circumstances, the continuation of the situation in Haiti threatened international peace and security in the region.⁶ The Council then noted that it was acting under Chapter VII of the Charter of the United Nations,⁷ and imposed sanctions against the *de facto* authorities in Haiti.⁸ The sanctions were to come into force one week after the resolution, unless the Secretary-General reported before that time that the imposition of the sanctions was not warranted.⁹ In subsequent resolutions related to the Haiti sanctions régime, the Council again determined the existence of a threat to international peace and security,¹⁰ and invoked Chapter VII.¹¹

² S/RES/841 (16 June 1993), preambular paragraph 6.

³ S/RES/841 (16 June 1993), preambular paragraph 9.

⁴ S/RES/841 (16 June 1993), preambular paragraph 10.

⁵ S/RES/841 (16 June 1993), preambular paragraph 13.

⁶ S/RES/841 (16 June 1993), preambular paragraph 14.

⁷ S/RES/841 (16 June 1993), preambular paragraph 15.

⁸ S/RES/841 (16 June 1993), operative paragraphs 5, 6 and 8.

⁹ S/RES/841 (16 June 1993), operative paragraph 3.

¹⁰ On most occasions the Council characterised the threat as being the failure of the military authorities in Haiti to fulfil their obligations under the Governor's Island Agreement: see, e.g., S/RES/873 (13 October 1993), preambular paragraph 4; S/RES/875 (16 October 1993), preambular paragraph 7; S/RES/917 (6 May 1994), preambular paragraph 13. On one occasion, however, the Council simply characterised the situation in Haiti as the threat: S/RES/940 (31 July 1994), preambular paragraph 10.

10.2 The objective of the Haiti sanctions régime

During the course of the Haiti sanctions régime, the major explicit objective of the sanctions was ensuring the reinstatement of President Jean-Bertrand Aristide's Government in Haiti. In the process of modifying the scope of the sanctions régime, however, the Council also modified subtly its explicit objectives. When the Council first imposed sanctions against Haiti, it expressed willingness to consider lifting the sanctions if the Secretary-General reported that the *de facto* authorities in Haiti had signed and begun implementing in good faith an agreement to reinstate the government of President Jean-Bertrand Aristide.¹² In August 1993, when the Council suspended the sanctions, it expressed readiness to terminate the sanctions if the Secretary-General, having regard to the views of the OAS Secretary-General, were to conclude that the relevant provisions of the Governor's Island Agreement had been fully implemented.¹³ In October 1993, when the Council reimposed the sanctions, it provided for the possibility that the sanctions might not be reimposed if the Secretary-General were to report, having regard to the view of the OAS Secretary-General, that the authorities in Haiti were implementing in full the agreement to reinstate the legitimate Government of President Aristide and had established the necessary measures to enable the United Nations Mission in Haiti (UNMIH) to carry out its mandate.¹⁴ The objective of the

¹¹ S/RES/861 (27 August 1993), preambular paragraph 7; S/RES/873 (13 October 1993), preambular paragraph 5; S/RES/875 (16 October 1993), preambular paragraph 8; S/RES/917 (6 May 1994), preambular paragraph 14; S/RES/940 (31 July 1994), operative paragraph 4.

¹² S/RES/841 (16 June 1993), operative paragraph 16.

¹³ S/RES/861 (27 August 1993), operative paragraph 3.

¹⁴ S/RES/873 (13 October 1993), operative paragraph 1. UNMIH was established by the Security Council in September 1993, in order to assist the Government of Haiti in the implementation of the Governor's Island Agreement, which had called for assistance for modernizing the armed forces of Haiti and establishing a new police force with the presence of United Nations personnel. For the establishment of UNMIH, see S/RES/867 (23 September 1993), operative paragraphs 1-4. UNMIH's mandate was extended on a number of occasions, ultimately expiring in late June 1996: see S/RES/905 (23 March 1994), operative paragraph 2; S/RES/933 (30 June

sanctions régime thus became the reinstatement of the legitimate Government of President Aristide and enabling UNMIH to pursue its mandate.

In November 1993, the Council stressed that the sanctions would remain in force until the objectives of the Governor's Island Agreement were fulfilled, including the departure of the Commander-in-Chief of the Haitian armed forces, the creation of a new police force permitting the restoration of constitutional order, and the return of the democratically-elected President Aristide.¹⁵ In May 1994, when it strengthened the sanctions, the Council reaffirmed that the goal of the international community remained the restoration of democracy in Haiti and the return of President Aristide.¹⁶ The Council further stated explicitly that the sanctions would not be lifted until the following developments had taken place: (a) The retirement of the Commander-in-Chief of the Haiti Armed Forces and the resignation or departure from Haiti of the Chief of Police of Port-au-Prince and the Chief of Staff of the Haiti Armed Forces;¹⁷ (b) The change of leadership of the police and military high command in Haiti had changes, as required by the Governor's Island Agreement;¹⁸ (c) The adoption of legislative actions called for in the Governor's Island Agreement and the creation of an environment in which free and fair elections could be organized;¹⁹ (d) The

1994), operative paragraph 1; S/RES/940 (31 July 1994), operative paragraphs 9-11 [revising as well as extending UNMIH's mandate]; S/RES/975 (30 January 1995), operative paragraph 8; S/RES/1007 (31 July 1994), operative paragraph 9; S/RES/1048 (29 February 1996), operative paragraph 5. UNMIH was succeeded by the United Nations Support Mission in Haiti, which was established by S/RES/1063 (28 June 1996), operative paragraph 2, in order to facilitate the transition back to democracy in Haiti.

¹⁵ S/26747: *Presidential statement of 15 November 1993*.

¹⁶ S/RES/917 (6 May 1994), preambular paragraph 8.

¹⁷ S/RES/917 (6 May 1994), operative paragraph 18(a).

¹⁸ S/RES/917 (6 May 1994), operative paragraph 18(b).

¹⁹ S/RES/917 (6 May 1994), operative paragraph 18(c).

creation of the proper environment for the deployment of UNMIH;²⁰ and (e) The return of the democratically elected President and the maintenance of constitutional order.²¹

In July 1994, when the Council strengthened the means for implementation of the sanctions even further, it again reaffirmed that the goal of the international community remained the restoration of democracy in Haiti and the prompt return of President Aristide,²² and noted that it would lift the sanctions following the return to Haiti of President Aristide.²³ In September 1994 the Council decided that the Haiti sanctions régime would be terminated on the day after President Aristide had returned to Haiti.²⁴

10.3 The scope of the Haiti sanctions régime

The Haiti sanctions régime initially consisted of an embargo against petroleum and arms, and financial sanctions. The embargo required States to prevent the sale or supply to Haiti of petroleum and petroleum products, as well as arms and arms-related *matériel*.²⁵ States were further required to prohibit air and sea traffic from entering the territory or territorial sea of Haiti if it was carrying petroleum or arms in breach of the sanctions.²⁶ The financial sanctions required States to freeze any funds belonging to or controlled by the

²⁰ S/RES/917 (6 May 1994), operative paragraph 18(d).

²¹ S/RES/917 (6 May 1994), operative paragraph 18(e).

²² S/RES/940 (31 July 1994), preambular paragraph 8.

²³ S/RES/940 (31 July 1994), operative paragraph 17.

²⁴ S/RES/944 (29 September 1994), operative paragraph 4.

²⁵ S/RES/841 (16 June 1993), operative paragraph 5. The Council provided, however, that exemptions could be made to the embargo for the importation, in non-commercial quantities and only in barrels or bottles, of petroleum or petroleum products, including propane gas for cooking, for verified essential humanitarian needs, if the Haiti Sanctions Committee so authorized, on an exceptional, case-by-case basis under a no-objection procedure: see *ibid*, operative paragraph 7. The Council further stipulated that in the case of such exemptions, arrangements should be made for the effective monitoring of delivery and use of the exempted imports: *ibid*.

²⁶ S/RES/841 (16 June 1993), operative paragraph 6.

Government of Haiti or the *de facto* authorities in Haiti.²⁷ In addition to outlining the scope of the sanctions, the Council also took the step of prohibiting all traffic from entering the territory or territorial sea of Haiti if carrying products prohibited by the sanctions régime.²⁸

The temporary suspension of the Haiti sanctions régime

Two months after the sanctions were first imposed, the Secretary-General reported to the Council that the Prime Minister of Haiti had been confirmed and had assumed office in Haiti.²⁹ In response to that development the Council suspended the sanctions,³⁰ noting however that the suspension of the sanctions would terminate if the Secretary-General were to report that the President of Haiti, the Commander-in-Chief of the Armed Forces of Haiti, or any other authorities in Haiti had not complied in good faith with the Governors Island Agreement.³¹ The Council further expressed its willingness to consider terminating the sanctions if the Secretary-General were to report that the provisions of the Governors Island Agreement had been fully implemented.³²

The reimposition of sanctions

In October 1994, barely six weeks after the sanctions had been suspended, the Council reimposed them. On 11 October the Council expressed its deep concern with the situation in Haiti and deplored events that had taken place that day, in which organized armed civilian groups had threatened journalists and diplomats waiting to meet a contingent

²⁷ S/RES/841 (16 June 1993), operative paragraph 8.

²⁸ S/RES/841 (16 June 1993), operative paragraph 6.

²⁹ S/26361 (26 August 1993), as noted by the Council in S/RES/861 (27 August 1993), preambular paragraph 6.

³⁰ S/RES/861 (27 August 1993), operative paragraph 1.

³¹ S/RES/861 (27 August 1993), operative paragraph 2.

³² S/RES/861 (27 August 1993), operative paragraph 3.

of UNMIH.³³ It then requested the Secretary-General to report to it urgently on whether those incidents constituted non-compliance by the armed forces of Haiti with the Governor's Island Agreement, thus warranting the reimposition of sanctions.³⁴ On 13 October, the Secretary-General reported that the military authorities of Haiti had failed to comply in good faith with the Governor's Island Agreement, and that he therefore considered it necessary to terminate the suspension of the sanctions.³⁵ On the same day, the Security Council decided to terminate the suspension of the sanctions.³⁶ The sanctions were to be imposed as before, except that exemptions could now be provided from the financial sanctions upon the request of President Aristide or Prime Minister Malval of Haiti,³⁷ and from the arms and petroleum sanctions if approved by the Haiti Sanctions Committee on a case-by-case basis under the no-objection procedure in response to a request by President Aristide or Prime Minister Malval.³⁸

Strengthening of the sanctions

In May 1994 the Security Council strengthened the sanctions régime considerably, applying aviation sanctions, targeted travel sanctions and economic sanctions, thus making the Haiti sanctions régime comprehensive. Under the aviation sanctions, States were required to deny permission to any aircraft to take off from, land in or overfly their territory if

³³ S/26567: *Presidential statement of 11 October 1993.*

³⁴ *Ibid.*

³⁵ S/26573 (13 October 1993): *Report of the Secretary-General on the question concerning Haiti*, paragraphs 9, 10.

³⁶ S/RES/873 (13 October 1993), operative paragraph 1.

³⁷ S/RES/873 (13 October 1993), operative paragraph 2.

³⁸ S/RES/873 (13 October 1993), operative paragraph 3.

it was destined for or had originated from Haiti.³⁹ Under the travel sanctions, States were required to prevent the entry into their territory of: (a) Officers of the Haitian military, including the police, and their families;⁴⁰ (b) The major participants in the 1991 *coup d'état* and members of the illegal governments in power since the *coup*, as well as their immediate families;⁴¹ and (c) People employed by or acting on behalf of the Haitian military and their immediate families.⁴² Under the economic sanctions, States were required to prevent the import to their territories from Haiti of all commodities and products,⁴³ and the export to Haiti of any commodities or products,⁴⁴ with the exception of: (a) Supplies intended strictly for medical purposes, and foodstuffs;⁴⁵ (b) Commodities and products for essential humanitarian needs, as approved by the Haiti Sanctions Committee under the no-objection procedure;⁴⁶ (c) Items previously exempted from the sanctions régime, such as petroleum and petroleum products, including propane gas for cooking, authorized by the Haiti Sanctions Committee, and exemptions from the financial, petroleum and arms sanctions as requested by the President and Prime Minister of Haiti and approved by the Haiti Sanctions Committee;⁴⁷ (d) Trade in informational materials, including books and other publications, needed for the free flow of information;⁴⁸ and (e) Equipment belonging to journalists.⁴⁹

³⁹ S/RES/917 (6 May 1994), operative paragraph 2. The Council exempted from the aviation sanctions, however, regularly scheduled commercial passenger flights and flights approved for humanitarian purposes by the Haiti Sanctions Committee: also operative paragraph 2.

⁴⁰ S/RES/917 (6 May 1994), operative paragraph 3(a).

⁴¹ S/RES/917 (6 May 1994), operative paragraph 3(b).

⁴² S/RES/917 (6 May 1994), operative paragraph 3(c).

⁴³ S/RES/917 (6 May 1994), operative paragraph 6.

⁴⁴ S/RES/917 (6 May 1994), operative paragraph 7.

⁴⁵ S/RES/917 (6 May 1994), operative paragraph 7(a).

⁴⁶ S/RES/917 (6 May 1994), operative paragraph 7(b).

⁴⁷ S/RES/917 (6 May 1994), operative paragraph 7(c) and (d).

⁴⁸ S/RES/917 (6 May 1994), operative paragraph 8.

10.4 The administration, monitoring and enforcement of the Haiti sanctions régime

The Security Council bestowed responsibilities related to the administration, implementation and enforcement of the sanctions upon a number of actors, including a Sanctions Committee, the Secretary-General, States, and a regional organization – the Organization of American States (OAS).

10.4.1 The Haiti Sanctions Committee

The Council established a Sanctions Committee at the same time that it created the Haiti sanctions régime.⁵⁰ The Committee (the “Haiti Sanctions Committee” or the “841 Committee”) was to report to the Council with its observations and recommendations,⁵¹ and to undertake the following responsibilities: (a) To examine reports submitted by States regarding implementation of the sanctions;⁵² (b) To seek from all States further information regarding action taken to implement the sanctions;⁵³ (c) To consider any information brought to its attention concerning violations of the sanctions and to recommend appropriate measures in response thereto;⁵⁴ (d) To consider and decide expeditiously upon requests for the imports of petroleum and petroleum products for essential humanitarian needs;⁵⁵ (e) To make periodic reports to the Security Council on information regarding alleged violations of

⁴⁹ *Ibid.* The Council provided in that same operative paragraph that the conditions and terms regulating the operation of this exemption would be determined by the Haiti Sanctions Committee.

⁵⁰ S/RES/841 (16 June 1993), operative paragraph 10.

⁵¹ S/RES/841 (16 June 1993), operative paragraph 10.

⁵² S/RES/841 (16 June 1993), operative paragraph 10(a).

⁵³ S/RES/841 (16 June 1993), operative paragraph 10(b).

⁵⁴ S/RES/841 (16 June 1993), operative paragraph 10(c).

⁵⁵ S/RES/841 (16 June 1993), operative paragraph 10(d).

the sanctions, identifying where possible those reported to be engaged in such violations;⁵⁶ and (f) To promulgate guidelines to facilitate implementation of the sanctions.⁵⁷

In May 1994, when the Council strengthened the sanctions régime, it further requested the Haiti Sanctions Committee to undertake the following responsibilities: (g) To examine reports submitted by States to the Secretary-General on measures taken to implement the strengthened sanctions;⁵⁸ (h) To seek from States further information regarding action taken to implement the sanctions;⁵⁹ (i) To consider information concerning sanctions violations and to make recommendations on how to increase the effectiveness of the sanctions and how to respond to violations;⁶⁰ (j) To provide information to the Secretary-General on a regular basis for distribution to Member States;⁶¹ (k) To decide expeditiously upon applications by States for exemptions from the aviation sanctions;⁶² (l) To amend its guidelines to take into account its new responsibilities under the strengthened sanctions régime;⁶³ and (m) To examine requests for assistance under the provisions of Article 50 of the Charter of the United Nations and make recommendations to the President of the Security Council for appropriate action.⁶⁴

⁵⁶ S/RES/841 (16 June 1993), operative paragraph 10(e).

⁵⁷ S/RES/841 (16 June 1993), operative paragraph 10(f).

⁵⁸ S/RES/917 (6 May 1994), operative paragraph 14(a).

⁵⁹ S/RES/917 (6 May 1994), operative paragraph 14(b).

⁶⁰ S/RES/917 (6 May 1994), operative paragraph 14(c) and (d).

⁶¹ S/RES/917 (6 May 1994), operative paragraph 14(d).

⁶² S/RES/917 (6 May 1994), operative paragraph 14(e).

⁶³ S/RES/917 (6 May 1994), operative paragraph 14(f).

⁶⁴ S/RES/917 (6 May 1994), operative paragraph 14(g).

The Haiti Sanctions Committee was dissolved on 16 October 1994, at the same time that the sanctions régime was terminated.⁶⁵ During its sixteen-month tenure the Committee held eleven formal meetings.⁶⁶ It did not, however, issue any reports.

10.4.2 The Secretary-General

The Security Council requested the Secretary-General to undertake a number of tasks in relation to the Haiti sanctions régime. In June 1993, when it established the Haiti sanctions régime, it requested him to undertake the following responsibilities: (a) Reporting to the Council, having regard to the views of the OAS Secretary-General, if the imposition of sanctions was not warranted;⁶⁷ (b) Reporting to the Council if at any time he determined, having regard to the views of the OAS Secretary-General, that the *de facto* authorities in Haiti had failed to comply in good faith with their commitments, as a result of which the sanctions would come into force immediately;⁶⁸ (c) Receiving from States reports submitted regarding measures taken to implement the sanctions;⁶⁹ (d) Providing all necessary assistance to the Haiti Sanctions Committee and making the necessary arrangements in the Secretariat for that purpose;⁷⁰ (e) Reporting to the Council before 15 July 1993 on progress achieved in the efforts jointly undertaken by him and the OAS Secretary-General with a

⁶⁵ The Council had foreshadowed the Committee's termination barely two weeks earlier, when it had decided that the Haiti sanctions régime would be terminated and the Committee dissolved on the day after President Aristide had returned to Haiti: S/RES/944 (29 September 1994), operative paragraphs 4, 5. President Aristide returned to Haiti on 15 October, at which time the Council noted that the sanctions régime would be terminated: S/RES/948 (15 October 1995), operative paragraph 10.

⁶⁶ *Index to Proceedings of the Security Council for 1994* (1995) United Nations, New York, p. xv.

⁶⁷ S/RES/841 (16 June 1993), operative paragraph 3.

⁶⁸ S/RES/841 (16 June 1993), operative paragraph 4.

⁶⁹ S/RES/841 (16 June 1993), operative paragraph 13.

⁷⁰ S/RES/841 (16 June 1993), operative paragraph 14. the Council reaffirmed that request in: S/RES/917 (6 May 1994), operative paragraph 15.

view to reaching a political solution to the crisis in Haiti;⁷¹ and (f) Reporting to the Council if, having regard to the views of the OAS Secretary-General, he determined that the *de facto* authorities in Haiti had signed and begun implementing in good faith an agreement to reinstate the legitimate Government of President Jean-Bertrand Aristide.⁷²

In August 1993, when the Council suspended the sanctions, it requested the Secretary-General to undertake additional duties, including: (g) Reporting to the Council if, having regard to the views of the OAS Secretary-General, he concluded that the parties to the Governor's Island Agreement or any other authorities in Haiti had not complied in good faith with that Agreement, in which case the sanctions would be re-imposed immediately;⁷³ and (h) Reporting to the Council if, having regard to the views of the OAS Secretary-General, he were to conclude that the relevant provisions of the Governor's Island Agreement had been fully implemented, in which case the sanctions would be terminated completely.⁷⁴

In September 1993, the Security Council deplored a recent upsurge in violence, including in particular the assassination of at least a dozen people during a church service.⁷⁵ The Council warned that unless there was an immediate effort by security forces to put an end to the violence, it would have no alternative but to consider that the *de facto* in Haiti were not complying in good faith with their obligations under the Governor's Island Agreement.⁷⁶ It then noted that if the Secretary-General were to report, having received the

⁷¹ S/RES/841 (16 June 1993), operative paragraph 15.

⁷² S/RES/841 (16 June 1993), operative paragraph 16.

⁷³ S/RES/861 (27 August 1993), operative paragraph 2.

⁷⁴ S/RES/861 (27 August 1993), operative paragraph 3.

⁷⁵ S/26460: *Presidential statement of 17 September 1993*.

⁷⁶ *Ibid.*

views of the OAS Secretary-General, that there had been a serious and consistent non-compliance with the Governor's Island Agreement, then the sanctions would be reinstated immediately.⁷⁷ On 11 October 1993, the Security Council expressed deep concern with the situation in Haiti and deplored events that had taken place that day, in which organized armed civilian groups had threatened journalists and diplomats waiting to meet a contingent of UNMIH.⁷⁸ It then requested the Secretary-General to report to it urgently on whether those incidents constituted non-compliance by the armed forces of Haiti with the Governor's Island Agreement, thus warranting the reimposition of sanctions.⁷⁹

In May 1994, when the Security Council strengthened the sanctions, it requested the Secretary-General to report on a monthly basis, having regard to the views of the OAS Secretary-General, on the situation in Haiti, the implementation of the Governor's Island Agreement, legislative actions including preparations for legislative elections, the full restoration of democracy in Haiti, the humanitarian situation in Haiti and the effectiveness of the implementation of sanctions.⁸⁰ In July 1994 the Council requested the Secretary-General to report to it at sixty day intervals on the implementation of the resolution by which the Council authorized the establishment of the multinational force to strengthen the implementation of the sanctions.⁸¹

⁷⁷ *Ibid.*

⁷⁸ S/26567: *Presidential statement of 11 October 1993.*

⁷⁹ *Ibid.*

⁸⁰ S/RES/917 (6 May 1994), operative paragraph 16.

⁸¹ S/RES/940 (31 July 1994), operative paragraph 14. For details relating to the establishment of the multinational force, see below.

10.4.3 States

In addition to the general obligation flowing from the establishment of the sanctions régime against Haiti to do everything in their power to implement sanctions within their own jurisdictions, States were also authorized by the Security Council to take various additional actions to implement, monitor or enforce the sanctions. When the sanctions régime was first established, the Council called upon all States to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.⁸² At the same time, the Council also: called upon all States to cooperate fully with the 841 Committee, including by supplying such information as it sought;⁸³ called upon States to bring proceedings against persons and entities violating the sanctions and to impose appropriate penalties;⁸⁴ and requested all States to report to the Secretary-General on the measures taken to implement the sanctions.⁸⁵

In October 1993, shortly after deciding to reimpose sanctions against Haiti, the Security Council invoked Chapters VII and VIII,⁸⁶ and called upon Member States, acting nationally or through regional agencies or arrangements, and cooperating with the legitimate Government of Haiti, to use such measures as necessary under its authority to ensure the strict implementation of the sanctions, including halting inbound maritime shipping in order to inspect and verify that their cargoes did not violate the sanctions.⁸⁷

⁸² S/RES/841 (16 June 1993), operative paragraph 9. The Council subsequently reiterated such a call when it strengthened the sanctions in May 1994. See: S/RES/917 (6 May 1994), operative paragraphs 11, 12.

⁸³ S/RES/841 (16 June 1993), operative paragraph 11.

⁸⁴ S/RES/841 (16 June 1993), operative paragraph 12.

⁸⁵ S/RES/841 (16 June 1993), operative paragraph 13; S/RES/917 (6 May 1994), operative paragraph 13.

⁸⁶ S/RES/875 (16 October 1993), preambular paragraph 8.

⁸⁷ S/RES/875 (16 October 1993), operative paragraph 1.

In May 1994 the Council strengthened the implementation of sanctions further by prohibiting maritime traffic from entering or leaving the territorial sea of Haiti, excepting regularly scheduled maritime shipping lines calling in Haiti with goods not prohibited under the sanctions régime.⁸⁸ The Council also invoked Chapter VIII and called upon Member States cooperating with the legitimate Government of Haiti, acting nationally or through regional agencies or arrangements, to use such measures as necessary to ensure the strict implementation of the sanctions and in particular to halt outward as well as inward maritime shipping in order to inspect and verify their cargoes and destination to ensure that they were not in violation of the sanctions.⁸⁹

In July 1994 the Security Council strengthened the implementation of the sanctions further, invoking Chapter VII and authorizing Member States to form a multinational force under unified command and control, which would use all necessary means to facilitate the departure from Haiti of the military leadership, the return of President Aristide, the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment permitting the implementation of the Governor's Island Agreement.⁹⁰ The multinational force would terminate once a secure and stable environment had been established, at which point UNMIH would assume the full range of functions contained in its mandate.⁹¹ At the same time, the Council also invited all States,

⁸⁸ S/RES/917 (6 May 1994), operative paragraph 9.

⁸⁹ S/RES/917 (6 May 1994), operative paragraph 10.

⁹⁰ S/RES/940 (31 July 1994), operative paragraph 4.

⁹¹ S/RES/940 (31 July 1994), operative paragraph 8.

and in particular those in the region, to provide support for the actions undertaken to implement the sanctions and their objectives.⁹²

The multinational force submitted two reports on its activities to the Council.⁹³ The reports illustrated that the force was able to undertake its responsibilities with little resistance, largely due to the successful negotiation of arrangements providing for the departure from power by certain key figures in the Haitian armed forces. The arrangements provided that those figures would step down when a general amnesty had been voted into law by the Haitian Parliament or on 15 October 1994 – whichever came first.⁹⁴ The force was able to secure the two key transportation facilities of the Port-au-Prince International Airport and port facility within its first day of operations.⁹⁵ Within three weeks it had brought more than 21,000 troops into Haiti to engage in activities such as taking control of the Heavy Weapons Company of the Haitian armed forces, initiating a weapons control programme, conducting police patrols and monitoring Haitian police activity, and coordinating civil operations such as water purification, improved sanitation and basic medical care.⁹⁶ By 10 October, the multinational force reported that The Haiti Parliament had reopened and its Chamber of Deputies and Senate had passed a bill authorizing President Aristide to grant amnesty to those who had participated in the 1991 *coup*.⁹⁷

⁹² S/RES/940 (31 July 1994), operative paragraph 12.

⁹³ S/1994/1107 (28 September 1994), annex: *Report of the multinational force in Haiti to the Security Council, submitted pursuant to Security Council resolution 940 (1994)* [hereafter “*First report of the multinational force in Haiti*”]; S/1994/1148 (10 October 1994), annex: *Second report of the multinational force in Haiti to the Security Council submitted pursuant to resolution 940 (1994)* [hereafter “*Second report of the multinational force in Haiti*”].

⁹⁴ *First report of the multinational force in Haiti, ibid*, paragraph 4.

⁹⁵ *Ibid*, paragraph 6.

⁹⁶ *Second report of the multinational force in Haiti*, above note 94, pages 2-4.

⁹⁷ *Ibid*, page 3.

In October 1994, when the Council terminated the Haiti sanctions régime, it recognized in particular the efforts that had been taken by the multinational force and its contributing Member States on behalf of the international community, in creating the conditions necessary for the return of democracy.⁹⁸

10.4.4 Regional and international organizations

When the Council established the Haiti sanctions régime, it called upon international organizations to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.⁹⁹ When the Council reimposed sanctions after having suspended them temporarily, it invoked Chapters VII and VIII,¹⁰⁰ and called upon Member States, acting nationally or through regional agencies or arrangements, and cooperating with the legitimate Government of Haiti, to use such measures as necessary under its authority to ensure the strict implementation of the sanctions, including halting inbound maritime shipping in order to inspect and verify that their cargoes did not violate the sanctions.¹⁰¹

In May 1994 the Council strengthened the implementation of sanctions further by prohibiting maritime traffic from entering or leaving the territorial sea of Haiti, excepting regularly scheduled maritime shipping lines calling in Haiti with goods not prohibited under the sanctions régime.¹⁰² The Council also invoked Chapter VIII and called upon Member States cooperating with the legitimate Government of Haiti, acting nationally or through

⁹⁸ S/RES/948 (15 October 1995), operative paragraph 5.

⁹⁹ S/RES/841 (16 June 1993), operative paragraph 9. The Council subsequently reiterated such a call when it strengthened the sanctions in May 1994. See: S/RES/917 (6 May 1994), operative paragraph 12.

¹⁰⁰ S/RES/875 (16 October 1993), preambular paragraph 8.

¹⁰¹ S/RES/875 (16 October 1993), operative paragraph 1.

regional agencies or arrangements, to use such measures as necessary to ensure the strict implementation of the sanctions and in particular to halt outward as well as inward maritime shipping in order to inspect and verify their cargoes and destination to ensure that they were not in violation of the sanctions.¹⁰³

10.5 Termination of the Haiti sanctions régime

On 29 September 1994 the Security Council welcomed the fact that the initial units of the multinational force had been peacefully deployed in Haiti on 19 September,¹⁰⁴ and decided that the Haiti sanctions régime would be terminated on the day after President Aristide had returned to Haiti.¹⁰⁵ The Council also decided that the Haiti Sanctions Committee would be dissolved at the same time that the sanctions régime was terminated.¹⁰⁶ On 15 October 1994 the Secretary-General sent a letter to the President of the Security Council confirming that President Aristide had returned to Haiti.¹⁰⁷ On the same day the Council welcomed with great satisfaction President Aristide's return to Haiti and expressed its confidence that the people of Haiti could begin to rebuild their country and consolidate democracy in the spirit of national reconciliation.¹⁰⁸ The Council also welcomed the fact that, given that President Aristide had returned to Haiti, the sanctions would be lifted.¹⁰⁹

¹⁰² S/RES/917 (6 May 1994), operative paragraph 9.

¹⁰³ S/RES/917 (6 May 1994), operative paragraph 10.

¹⁰⁴ S/RES/944 (29 September 1994), preambular paragraph 4.

¹⁰⁵ S/RES/944 (29 September 1994), operative paragraph 4.

¹⁰⁶ S/RES/944 (29 September 1994), operative paragraph 5.

¹⁰⁷ S/1994/1169: *Letter dated 15 October 1994 from the Secretary-General addressed to the President of the Security Council.*

¹⁰⁸ S/RES/948 (15 October 1995), operative paragraph 1.

¹⁰⁹ S/RES/948 (15 October 1995), operative paragraph 10.

10.6 Notable aspects of the Haiti sanctions régime

The Haiti sanctions régime was noteworthy for the manner in which it followed the initial application of sanctions by a regional organization (the Organization of American States), and for the fact that its application was requested by a democratically elected Head of State who had been ousted from power by a military *coup*. In terms of its implementation, the Haiti sanctions régime represented another example, along with those of Iraq, the former Yugoslavia, and the Federal Republic of Yugoslavia (Serbia-Montenegro), in which the Council authorized States, largely acting in coordination with regional organizations or arrangements, to take the measures necessary to intercept maritime shipping that was not in compliance with the sanctions.

In terms of its contribution to the evolution of sanctions practice, the Haiti sanctions régime provided an early example of the Council employing targeted travel sanctions against decision-makers and those connected with them, including family members.¹¹⁰ The Haiti sanctions régime was also notable for the manner in which the Security Council demonstrated flexibility in responding to improvements and deteriorations in the situation in Haiti. The Council again employed time-delays, as it had with sanctions against Libya, the Federal Republic of Yugoslavia (Serbia-Montenegro) and the Bosnian Serbs, in order to provide the de facto authorities in Haiti with an opportunity to avoid the sanctions by complying with its demands under the sanctions régime.¹¹¹ In another example of flexibility,

¹¹⁰ See: S/RES/917 (6 May 1994), operative paragraph 3.

¹¹¹ See: S/RES/841 (16 June 1993), operative paragraphs 3, 4 [providing that the initial sanctions would come into force one week after the resolution, unless the Secretary-General reported before that time that the imposition of the sanctions was not warranted]; S/RES/873 (13 October 1993), operative paragraph 1 [providing that the reimposition of sanctions would come into effect five days later, unless the Secretary-General were to report that the de facto authorities were implementing in full the agreement to reinstate the Government of President

however, when the Council strengthened the sanctions in May 1994, it employed a time-delay in relation to the introduction of comprehensive sanctions, whilst applying the aviation and travel sanctions immediately.¹¹² The Council also identified concrete requirements for the suspension, re-imposition and termination of the sanctions, thus meaning that modifications to the sanctions régime flowed directly from the extent to which the *de facto* authorities in Haiti complied with the requirements of the Council's resolutions. Partly as a result of the Council's flexible approach, the Haiti sanctions régime provided the only example to date in which a sanctions régime has been suspended in its entirety, then subsequently reapplied in its entirety. Finally, at the time of its termination, the Haiti sanctions régime became the shortest sanctions régime yet imposed by the Security Council.¹¹³

Aristide and had established the necessary measures to enable UNMIH to carry out its mandate]; S/RES/917 (6 May 1994), operative paragraph 5 [providing that the comprehensive sanctions outlined in operative paragraphs 6-8 of that resolution would come into effect fifteen days later, unless the Secretary-General were to report that the Haitian military had taken the steps required of them under the Governor's Island Agreement].

¹¹² As stated in the previous note, the comprehensive sanctions were to come into effect fifteen days later. The aviation and travel sanctions, however, were to be applied "without delay": see S/RES/917 (6 May 1994), operative paragraphs 2, 3.

¹¹³ The Haiti sanctions régime remains the sanctions régime with the second shortest duration, after the Ethiopia and Eritrea sanctions régime, which was imposed a period of twelve months.

11. The UNITA sanctions régime

The Security Council imposed sanctions against the Angolan rebel group the National Union for the Total Independence of Angola (UNITA) in September 1993, with the aim of ensuring that it stopped fighting against the Angolan Government and adhered to its commitments under a set of peace accords entitled the “Acordos de Paz”.¹ The sanctions régime initially consisted of an arms and petroleum embargo. It was subsequently expanded on two occasions: in August 1997, when travel, diplomatic and aviation sanctions were also applied; and in June 1998, when financial and diamond sanctions and further diplomatic sanctions were imposed. The sanctions régime was in place for a period of nine years before it was eventually terminated in December 2002.

11.1 The constitutional basis for imposing sanctions against Angola/UNITA

In September 1993 the Security Council expressed grave concern at the continuing deterioration of the political and military situation in Angola,² and strongly condemned UNITA for not having taken the necessary steps to comply with its previous demands.³ It

¹ Angola had suffered a troubled, decades-long period, consisting of civil war, failed peace agreements and a contested election, in which UNITA had narrowly lost to the sitting Angolan Government.

² S/RES/864 (15 September 1993), preambular paragraph 3.

³ S/RES/864 (15 September 1993), section B, preambular paragraph 1. Those demands included that UNITA respect the results of the election that had been held on 29 and 30 September 1992 and that it cease its military actions. See, e.g.: S/RES/804 (29 January 1993), operative paragraph 3 (demanding that the parties cease fire immediately and restore a meaningful dialogue on a clear timetable for the implementation of the Accords); S/RES/811 (12 March 1993), operative paragraph 2 (demanding that UNITA accept unreservedly the results of the elections and abide fully by the Acordos de Paz), operative paragraph 3 (strongly demanding an immediate cease-fire throughout the country and the resumption of dialogue); S/RES/834 (1 June 1993), operative paragraph 3 (reiterating the demand that UNITA accept unreservedly the results of the election); S/RES/851, operative paragraph 4 (reiterating the demand that UNITA accept the results of the election), operative paragraph 5 (condemning UNITA for its continuing military actions and demanding that they cease).

then determined that, as a result of UNITA's military actions, the situation in Angola constituted a threat to international peace and security,⁴ and noted that it was acting under Chapter VII of the Charter of the United Nations,⁵ before imposing sanctions against UNITA. In subsequent decisions connected to the sanctions régime, the Council again characterised the situation in Angola as a threat to international peace and security,⁶ and invoked Chapter VII.⁷

⁴ S/RES/864 (15 September 1993), section B, preambular paragraph 4.

⁵ S/RES/864 (15 September 1993), section B, preambular paragraph 5.

⁶ See, e.g.: S/RES/1127 (28 August 1997), section B, preambular paragraph 1; S/RES/1135 (29 October 1997), section B, floating paragraph 1 (located between operative paragraphs 4 and 5); S/RES/1173 (12 June 1998), section B, preambular paragraph 2; S/RES/1176 (24 June 1998), preambular paragraph 3; S/RES/1237 (7 May 1999), section B, preambular paragraph 1; S/RES/1295 (18 April 2000), section A, preambular paragraph 1; S/RES/1336 (23 January 2001), preambular paragraph 4; S/RES/1348 (19 April 2001), preambular paragraph 5; S/RES/1374 (19 October 2001), preambular paragraph 5; S/RES/1404 (18 April 2002), preambular paragraph 6.

⁷ See, e.g.: S/RES/1127 (28 August 1997), section B, preambular paragraph 2; S/RES/1130 (29 September 1997), preambular paragraph 3; S/RES/1135 (29 October 1997), section B, floating paragraph 2 (located between operative paragraphs 4 and 5); S/RES/1173 (12 June 1998), section B, preambular paragraph 3; S/RES/1176 (24 June 1998), preambular paragraph 4; S/RES/1237 (7 May 1999), section B, preambular paragraph 2; S/RES/1295 (18 April 2000), section A, preambular paragraph 2; S/RES/1336 (23 January 2001), preambular paragraph 5; S/RES/1348 (19 April 2001), preambular paragraph 6; S/RES/1374 (19 October 2001), preambular paragraph 6; S/RES/1404 (18 April 2002), preambular paragraph 8; S/RES/1412 (17 May 2002), preambular paragraph 9; S/RES/1432 (15 August 2002), preambular paragraph 8; S/RES/1439 (18 October 2002), preambular paragraph 8; S/RES/1448 (9 December 2002), preambular paragraph 5.

11.2 The objectives of the UNITA sanctions régime⁸

The initial objectives of the sanctions régime against UNITA were to ensure that the rebel group submitted to an effective cease-fire and that it agreed to implement the Acordos de Paz and relevant Security Council resolutions.⁹ In August 1997, when the Council expanded the UNITA sanctions régime for the first time, it demanded that UNITA implement immediately its obligations under the Lusaka Protocol.¹⁰ In June 1998, when the Council again strengthened the sanctions régime, it demanded that UNITA cooperate fully in the immediate extension of State administration throughout the national territory.¹¹ In April

⁸ While the focus of this study is on the way in which the Council itself explicitly defined the objectives of the UNITA sanctions régime, in the case of the UNITA sanctions a number of statements relating to the purpose of the sanctions were also made by officials or entities upon whom the Council has bestowed responsibility for the administration or implementation of the UNITA sanctions régime, such as the Chairman of the 864 Committee, the Panel of Experts on UNITA sanctions, and the monitoring mechanism on UNITA sanctions. See, e.g.: S/1999/829, appendix 1: *Statement by the Chairman of the Angola Sanctions Committee before the seventieth ordinary session of the Council of Ministers of the OAU*, Algiers, 9 July 1999 [stating that the sanctions were “intended to foster the conditions for a resumption of political dialogue to achieve a durable resolution of the conflict in Angola”]; S/2000/203, enclosure: *Report of the Panel of Experts on violations of Security Council sanctions against UNITA*, paragraph 2 [noting that “the [Security] Council has repeatedly emphasised that the purpose of the sanctions was ... to promote a political settlement to the long conflict in Angola by requiring UNITA to comply with the obligations which it undertook”]; S/2001/966, enclosure: *Supplementary report of the Monitoring Mechanism on Sanctions against UNITA*, paragraph 7 [commenting that “[t]he Security Council imposed sanctions against UNITA ... as a vehicle of peace, to persuade the rebels to resume good faith participation in the process of national reconciliation”].

⁹ S/RES/864 (15 September 1993), operative paragraph 17. The Council also provided for the possibility that UNITA might initially comply with these objectives, but subsequently renege upon them, by deciding that if at any time the Secretary-General were to report to the Council that UNITA had broken the cease-fire or ceased to participate constructively in the implementation of the Peace Accords and the relevant Council resolutions, then the sanctions would come into force immediately: *ibid*, operative paragraph 19.

¹⁰ S/RES/1127 (28 August 1997), operative paragraphs 2, 3. Those obligations included: demilitarizing its forces; transforming its radio station Vorgan into a non-partisan broadcasting facility; cooperating fully in the process of the normalization of State administration throughout Angola; immediately providing the Joint Commission, established under the Lusaka Protocol, with accurate and complete information on the strength of its armed personnel, so that verification, disarmament and demobilization could take place, in accordance with the Lusaka Protocol.

¹¹ S/RES/1173 (12 June 1998), operative paragraph 2. This demand had been a requirement of both the Acordos de Paz and the Lusaka Protocol. As noted above, the implementation of both of those agreements was the primary objective of the UNITA sanctions régime.

2000, when it sought to improve the implementation of the sanctions (rather than to expand their scope), the Council noted that the sanctions against UNITA were intended to promote a political settlement to the conflict in Angola, by requiring UNITA to comply with the obligations which it had undertaken under the Acordos de Paz and the Lusaka Protocol, and by curtailing the ability of UNITA to pursue its objectives by military means.¹²

In May 2002, when it decided to suspend temporarily the travel sanctions against UNITA officials and their families, the Council noted that, in determining whether to extend that suspension at the end of the temporary period, it would take into account the progress achieved in the process of national reconciliation.¹³ In August 2002, when it in fact decided to extend the initial suspension of those travel sanctions for a further temporary period, the Council noted that, when the time came to review the suspended measures again, it would take into account information on the implementation of the peace accords, hence reaffirming that the implementation of the peace accords remained the major objective of the overall sanctions régime.¹⁴ In December 2002, when the Council eventually terminated the UNITA sanctions régime, it welcomed the steps taken by the Angolan Government and UNITA toward the full implementation of the Acordos de Paz, the Lusaka Protocol, relevant Security Council resolutions and other recent initiatives aimed at achieving peace.¹⁵

¹² S/RES/1295 (18 April 2000), preambular paragraph 5.

¹³ S/RES/1412 (17 May 2002), operative paragraph 2.

¹⁴ S/RES/1432 (15 August 2002), operative paragraph 2.

¹⁵ S/RES/1448 (9 December 2002), preambular paragraph 3. The other recent initiatives included a Memorandum of Understanding dated 4 April 2002 [S/2002/483 (26 April 2002), annex], a declaration on the peace process by the Angolan Government [S/2002/1337 (6 December 2002), annex], and the completion of the work of a Joint Commission.

11.3 The scope of the UNITA sanctions régime

The sanctions initially imposed against UNITA under resolution 864 (1993) consisted of an arms and petroleum embargo. States were thus required to prevent the sale or supply to Angola, other than through points of entry to be designated by the Government of Angola, of arms and related *matériel*, military assistance, and petroleum and petroleum products.¹⁶ In August 1997, after a period in which hostilities had resumed and UNITA had continued to refuse to implement the Acordos de Paz and its obligations under multiple Security Council resolutions, the Council strengthened the sanctions by imposing a combination of travel, representative, aircraft and aviation sanctions against UNITA.¹⁷ Under the travel sanctions, States were required to prevent the entry into or transit through their territories of senior UNITA officials and all adult members of their immediate families,¹⁸ and to suspend or cancel any travel documents issued to people in those categories.¹⁹ Under the representative sanctions, the Council required all States to close all UNITA offices in their territories.²⁰ Under the aircraft and aviation sanctions, States were required: to prevent aircraft from arriving in, departing from, or overflying their territories if they had originated from or were destined for places not on a list of places cleared by the Angolan

¹⁶ S/RES/864 (15 September 1993), operative paragraph 19.

¹⁷ The additional sanctions were laid out in detail in: S/RES/1127 (28 August 1997), operative paragraph 4. Although the Council decided in August that the measures would be imposed, their imposition was contingent upon UNITA failing to take certain measures. As a result of the need to delay the imposition of the measures until it had been determined that UNITA had failed to take those measures, the Council delayed the application of the additional sanctions until 30 October 1997: see S/RES/1130 (29 September 1997), operative paragraph 2.

¹⁸ S/RES/1127 (28 August 1997), operative paragraph 4(a). The Council provided, however, that nothing would oblige a State to refuse entry to its own nationals: see also S/RES/1127 (28 August 1997), operative paragraph 4(a).

¹⁹ S/RES/1127 (28 August 1997), operative paragraph 4(b).

²⁰ S/RES/1127 (28 August 1997), operative paragraph 4(c).

Government;²¹ to prohibit the provision of aircraft or aircraft parts to Angola, other than through points of entry designated by the Angolan Government;²² and to prohibit the provision of engineering, servicing, certification or insurance for aircraft registered in Angola, other than those designated by the Angolan Government.²³ The Council outlined exemptions from the additional sanctions, however, for cases of medical emergency and for flights carrying food, medicine or supplies for essential humanitarian needs.²⁴

In June 1998, the Council again expanded the sanctions, imposing a mixture of financial, representative and targeted economic sanctions, including diamond sanctions, against UNITA.²⁵ Under the financial sanctions, States were required to freeze funds in their territories belonging to UNITA as an organization or to senior UNITA officials and adult members of their immediate families.²⁶ Under the representative sanctions, States were required to prevent all official contacts with the UNITA leadership in areas of Angola to which State administration had not been extended.²⁷ Under the targeted economic sanctions, States were required: to prohibit the import from Angola of diamonds not controlled through the Certificate-of-Origin régime of the Angolan Government;²⁸ to prohibit the same or supply to areas of Angola to which State administration had not been extended, of mining

²¹ S/RES/1127 (28 August 1997), operative paragraph 4(d)(i).

²² S/RES/1127 (28 August 1997), operative paragraph 4(d)(ii).

²³ S/RES/1127 (28 August 1997), operative paragraph 4(d)(iii).

²⁴ S/RES/1127 (28 August 1997), operative paragraph 5. The exemptions were to be approved in advance by the UNITA Sanctions Committee.

²⁵ The additional sanctions were outlined in resolution 1173 (1998), of 12 June 1998. The initial date for their application was to be 25 June: S/RES/1173 (12 June 1998), operative paragraph 14. They did not enter into force, however, until 1 July, in accordance with the extension outlined in resolution 1176 (1998): S/RES/1176 (24 June 1998), operative paragraph 2.

²⁶ S/RES/1173 (12 June 1998), operative paragraph 11.

²⁷ S/RES/1173 (12 June 1998), operative paragraph 12(a). Exempt from these sanctions, however, were contacts by representatives of the Government of Unity and National Reconciliation, the United Nations and observer States to the Lusaka Protocol.

equipment and services;²⁹ and to prohibit the sale or supply to those areas of vehicles, watercraft and spare parts for vehicles and watercraft.³⁰

In April 2000, the Council adopted resolution 1295 (2000), introducing a range of voluntary measures that States might take to improve the implementation of sanctions. Although resolution 1295 (2000) was quite specific in outlining steps that could be taken to improve the implementation of the arms, petroleum, diamond, financial, travel and diplomatic sanctions,³¹ the fact that the measures were voluntary rather than mandatory meant that the resolution did not modify the scope of the sanctions régime.

In May 2002, after the death of the UNITA leader Jonas Savimbi, and when it appeared that the decades-long conflict between UNITA and the Angolan Government was drawing to a close, the Council narrowed the scope of the sanctions by suspending the travel sanctions against UNITA officials and their families.³²

11.4 The administration, monitoring and enforcement of the UNITA sanctions régime

The Security Council has bestowed responsibilities relating to the administration, implement and enforcement of the sanctions upon a range of actors, including the Secretary-General, the UNITA Sanctions Committee, a Panel of Experts and a monitoring mechanism.

²⁸ S/RES/1173 (12 June 1998), operative paragraph 12(b).

²⁹ S/RES/1173 (12 June 1998), operative paragraph 12(c).

³⁰ S/RES/1173 (12 June 1998), operative paragraph 12(d).

³¹ For further details of the recommendations made, see the discussion below, in section 11.4, of the manner in which the Council acted upon the recommendations of the UNITA Panel of Experts.

³² S/RES/1412 (17 May 2002), operative paragraph 1. The suspension was for a period of ninety days. In August 2002, the Council extended the suspension of those for a further ninety days: S/RES/1432 (15 August 2002), operative paragraph 1.

11.4.1 The Secretary-General

When the Security Council established the sanctions régime, it requested the Secretary-General: to notify it if, before the date on which the sanctions were to come into force, an effective cease-fire had been established and agreement had been reached on the implementation of the Acordos de Paz and relevant Security Council resolutions, in which case the sanctions would not come into force;³³ and, in the event that the sanctions were not to come into force due to the establishment of a cease-fire and the achievement of an agreement upon the implementation of the Acordos de Paz and relevant Security Council resolutions, to report to the Council if UNITA subsequently broke the cease-fire or ceased participating constructively in the establishment of a cease-fire and the achievement of an agreement upon the implementation of the Acordos de Paz and relevant Security Council resolutions, in which case the sanctions would come into force immediately.³⁴

In March 1994, the Council expressed its readiness to strengthen the sanctions against UNITA in the light, *inter alia*, of a recommendation by the Secretary-General either to impose additional sanctions or to review those in effect.³⁵ In October 1996, the Council expressed its readiness to impose additional sanctions unless the Secretary-General were to report by 20 November 1996 that UNITA had made substantial and genuine progress in fulfilling its obligations under the peace process.³⁶ In February 1997, the Council expressed

³³ S/RES/864 (15 September 1993), operative paragraph 17. The same operative paragraph provided that the sanctions would come into force ten days later, unless the Secretary-General were to provide such a notification.

³⁴ S/RES/864 (15 September 1993), operative paragraph 18.

³⁵ S/RES/903 (16 March 1994), operative paragraph 10; S/RES/922 (31 May 1994), operative paragraph 7. In subsequent decisions the Council again expressed its readiness to consider further measures, in the light of recommendations by the Secretary-General. See: S/RES/1055 (8 May 1996), operative paragraph 28; S/RES/1064 (11 July 1996), operative paragraph 28.

³⁶ S/RES/1075 (11 October 1996), operative paragraph 13.

its readiness to consider the imposition of additional sanctions in the light of a report to be submitted by the Secretary-General on the status of the formation of the Government of Unity and National Reconciliation.³⁷ In August 1997, when the Council strengthened the sanctions against UNITA, it requested the Secretary-General to undertake the following additional tasks: to report to it if, before the date on which the additional sanctions were to come into force, UNITA had taken concrete and irreversible steps to implement its obligations under the Lusaka Protocol, in which case the sanctions would not come into effect,³⁸ and to report to it on UNITA's compliance with its obligation to implement the Lusaka Protocol.³⁹

In March 1998, the Council requested the Secretary-General to report on violations of the travel, diplomatic and aviation sanctions against UNITA.⁴⁰ In June 1998, when the Security Council strengthened the sanctions further, it requested the Secretary-General to undertake the following additional duties: to report to it if, two days before the date on which the additional sanctions were to come into force, UNITA had complied with its demand to cooperate without conditions in the extension of State administration throughout

³⁷ S/RES/1098 (27 February 1997), operative paragraph 4.

³⁸ S/RES/1127 (28 August 1997), operative paragraph 7. The same operative paragraph provided that the sanctions would come into force one month later, unless the Secretary-General were to report in such a manner. The Secretary-General did subsequently report that UNITA had taken certain steps to implement its obligations, thus prompting the Council to postpone the date on which the additional sanctions would come into force by a further month and to affirm its willingness to review further the application of the additional sanctions: S/RES/1130 (29 September 1997), operative paragraphs 2, 3.

³⁹ S/RES/1127 (28 August 1997), operative paragraph 8. The application of the sanctions was eventually delayed until 30 October 1997. The Council thus modified the timing of this request to the Secretary-General, asking him to report by 8 December 1997, and every ninety days thereafter, on the UNITA's compliance in implementing the Lusaka Protocol: S/RES/1135 (29 October 1997), operative paragraph 7.

⁴⁰ S/RES/1157 (20 March 1998), operative paragraph 4. The Council again made such a request of the Secretary-General in: S/RES/1164 (29 April 1998), operative paragraph 14.

Angola, in which case the sanctions would not come into effect;⁴¹ and to report to it subsequently if UNITA had complied with all its relevant obligations, in which case the additional sanctions imposed in August 1997 and June 1998 would be reviewed and terminated.⁴² In October 1998, the Council requested the Secretary-General to make recommendations for improving the implementation of the sanctions.⁴³

In May 1999, when the Security Council established expert panels to investigate reports of violations of the sanctions, it requested the Secretary-General to establish a Trust Fund to finance the activities of the expert panels.⁴⁴ In April 2000, when the Council decided to establish the UNITA monitoring mechanism and outlined a range of voluntary measures that might be taken by States and regional and sub-regional organizations and arrangements, it requested the Secretary-General: to establish the monitoring mechanism;⁴⁵ to strengthen collaboration between the United Nations and regional and international organizations, including Interpol, that might be involved in monitoring or enforcing the implementation of the sanctions;⁴⁶ and to develop an information package and media campaign designed to educate the public at large on the sanctions.⁴⁷

⁴¹ S/RES/1173 (12 June 1998), operative paragraph 14 [stipulating that, unless such a report were received by 23 June 1998, the additional sanctions would come into effect on 25 June]. As a result of the subsequent postponement of the date on which the additional sanctions would come into force, the date for the submission of such a report was also postponed, from 23 June until 1 July 1998: S/RES/1176 (24 June 1998), operative paragraph 2.

⁴² S/RES/1173 (12 June 1998), operative paragraph 15.

⁴³ S/RES/1202 (15 October 1998), operative paragraph 15. The request was reiterated in S/RES/1213 (3 December 1998), operative paragraph 13.

⁴⁴ S/RES/1237 (7 May 1999), operative paragraph 11. For discussion of the establishment and activities of the expert panels, which ultimately decided to operate as a single Panel of Experts, see below.

⁴⁵ S/RES/1295 (18 April 2000), operative paragraph 3.

⁴⁶ S/RES/1295 (18 April 2000), operative paragraph 29.

⁴⁷ S/RES/1295 (18 April 2000), operative paragraph 30.

In January, April and October 2001, and April and December 2002, when the Council extended the mandate of the monitoring mechanism, it requested the Secretary-General to appoint the requisite number of experts to serve on the monitoring mechanism and to make the necessary financial arrangements to support the mechanism's work.⁴⁸ In December 2002, upon the termination of the UNITA sanctions régime, the Council also requested the Secretary-General to close the Trust Fund established in May 1999 and to arrange for the remaining funds to be reimbursed to contributors.⁴⁹

11.4.2 The UNITA Sanctions Committee

The Security Council created the UNITA Sanctions Committee (also referred to as "the Angola Sanctions Committee" or "the 864 Committee") in resolution 864 (1993) and its responsibilities have expanded as the sanctions régime has evolved. Under resolution 864 (1993), the UNITA Sanctions Committee was established, in accordance with rule 28 of the Council's provisional rules of procedure, with a mandate to report on its work to the Council with its observations and recommendations,⁵⁰ and to perform the following tasks: (a) To examine the reports submitted by States on the measures they had adopted to meet their obligations under the sanctions régime;⁵¹ (b) To seek further information from States on

⁴⁸ S/RES/1336 (23 January 2001), operative paragraph 5 [requesting that the Secretary-General reappoint five experts to the monitoring mechanism]; S/RES/1348 (19 April 2001), operative paragraph 5 [requesting that the Secretary-General appoint five experts to the monitoring mechanism]; S/RES/1374 (19 October 2001), operative paragraph 7 [requesting that the Secretary-General appoint four experts to the monitoring mechanism]; S/RES/1404 (18 April 2002), operative paragraph 6 [requesting that the Secretary-General appoint four experts to the monitoring mechanism]; S/RES/1439 (18 October 2002), operative paragraph 5 [requesting that the Secretary-General appoint two experts to the monitoring mechanism].

⁴⁹ S/RES/1439 (18 October 2002), operative paragraph 4.

⁵⁰ S/RES/864 (15 September 1993), operative paragraph 22.

⁵¹ S/RES/864 (15 September 1993), operative paragraph 22 (a).

the action taken by them to implement the sanctions;⁵² (c) To consider information brought to its attention by States concerning violations of the sanctions and to recommend appropriate measures in response thereto;⁵³ (d) To make periodic reports to the Council on information submitted to it regarding alleged violations of the sanctions, identifying where possible persons or entities, including vessels, reported to be engaged in such violations;⁵⁴ and (e) To promulgate guidelines that might be necessary to facilitate the implementation of the sanctions.⁵⁵

In June 1994, the Council requested the Committee to report to it on compliance with the sanctions régime and in particular on possible violations by two neighbouring States.⁵⁶ In August 1997, when the scope of the UNITA sanctions régime was expanded to incorporate travel, representative and aircraft sanctions, the Security Council further requested the 864 Committee to assume the following responsibilities: (a) To draw up guidelines for the implementation of the additional sanctions, including the designation of UNITA officials and family members whose travel was to be prohibited;⁵⁷ (b) To decide upon and give favourable consideration to requests for the exemptions from the sanctions outlined in the resolution;⁵⁸ and (c) To report to the Council by 15 November regarding the actions taken by States to implement the additional sanctions.⁵⁹

⁵² S/RES/864 (15 September 1993), operative paragraph 22 (b).

⁵³ S/RES/864 (15 September 1993), operative paragraph 22 (c).

⁵⁴ S/RES/864 (15 September 1993), operative paragraph 22 (d).

⁵⁵ S/RES/864 (15 September 1993), operative paragraph 22 (e).

⁵⁶ S/RES/932 (30 June 1994), operative paragraph 8.

⁵⁷ S/RES/1127 (28 August 1997), operative paragraph 11 (a).

⁵⁸ S/RES/1127 (28 August 1997), operative paragraph 11 (b).

⁵⁹ S/RES/1127 (28 August 1997), operative paragraph 11 (c). As a result of the subsequent postponement of the date on which the additional sanctions would come into force, the date for the submission of this report was also postponed, to 15 December 1997: S/RES/1135 (29 October 1997), operative paragraph 9.

In June 1998, when the Council strengthened the sanctions régime further, it requested the Committee to assume the following additional duties: (a) To draw up guidelines for the implementation of the new sanctions and to consider ways of strengthening the effectiveness of all the sanctions now imposed against UNITA;⁶⁰ and (b) To report to the Council by 31 July 1998 on the actions taken by States to implement the new sanctions;⁶¹ and (c) To authorize, on a case-by-case basis and under the no-objection procedure, exemptions from the additional sanctions for verified medical and humanitarian purposes.⁶² In October 1998, the Council requested the Chairman of the 864 Committee to investigate reports that the leader of UNITA had travelled outside Angola in violation of the sanctions, and that UNITA forces had received military training and assistance, as well as arms, also in violation of the sanctions.⁶³

In January 1999, the Council requested the 864 Committee to prepare a report on steps that could be taken to prevent violations of the UNITA sanctions and to improve their implementation,⁶⁴ and it encouraged the Chairman of the Committee to consult with the OAU and SADC on ways to strengthen the implementation of the sanctions.⁶⁵ In May 1999, the Council requested the Chairman of the Committee to submit to it no later than 31

⁶⁰ S/RES/1173 (12 June 1998), operative paragraph 20 (a).

⁶¹ S/RES/1173 (12 June 1998), operative paragraph 20 (b). As a result of the subsequent postponement of the date on which the additional sanctions would come into force, the date for the submission of this report was also postponed, until 7 August 1998: S/RES/1176 (24 June 1998), operative paragraph 3.

⁶² S/RES/1173 (12 June 1998), operative paragraph 13.

⁶³ S/RES/1202 (15 October 1998), operative paragraph 14.

⁶⁴ S/RES/1221 (12 January 1999), operative paragraph 8. The Council's request was implicit, as it expressed its readiness to pursue reports of sanctions violations, to take steps to reinforce the implementation of the sanctions, and to consider the imposition of additional measures, including in the area of telecommunications, on the basis of a report to be prepared by the Angola sanctions committee.

⁶⁵ S/RES/1221 (12 January 1999), operative paragraph 9.

July 1999 an interim report of the expert panels and to submit the final report of the panels within six months of their formation.⁶⁶ In April 2000, when the Council established the UNITA monitoring mechanism, it requested the UNITA Committee to update the list of UNITA officials and adult members of their immediate families who were subject to travel sanctions and to expand the information contained in that list to include date and place of birth and any known addresses.⁶⁷

In January, April and October 2001, and April and October 2002, when the Council extended the mandate of the monitoring mechanism, it requested the Chairman of the Committee to submit to it prior to the expiration of each mandate, the relevant written report of the monitoring mechanism.⁶⁸ In October 2001, the Council also called upon the Committee to undertake, by 31 December 2001, a review of the final and supplementary reports of the monitoring mechanism, with a view to examining the recommendations of the reports and to offering guidance to the monitoring mechanism on its future work.⁶⁹

The UNITA Sanctions Committee was eventually dissolved in December 2002, upon the termination of the UNITA sanctions régime itself.⁷⁰ During its almost ten-year

⁶⁶ S/RES/1237 (7 May 1999), operative paragraph 7.

⁶⁷ S/RES/1295 (18 April 2000), operative paragraph 24.

⁶⁸ S/RES/1336 (23 January 2001), operative paragraph 6 [requesting that the written addendum to the monitoring mechanism's final report be submitted by 19 April 2001]; S/RES/1348 (19 April 2001), operative paragraph 6 [requesting that the mechanism's supplementary report be submitted by 19 October 2001]; S/RES/1374 (19 October 2001), operative paragraph 8 [requesting that the additional report of the mechanism be submitted by 19 April 2002]; S/RES/1404 (18 April 2002), operative paragraph 7 [requesting that the additional report of the monitoring mechanism be submitted by 19 October 2002]; S/RES/1439 (18 October 2002), operative paragraph 6 [requesting that the additional report of the monitoring mechanism be submitted by 19 December 2002].

⁶⁹ S/RES/1374 (19 October 2001), operative paragraph 4.

⁷⁰ S/RES/1448 (9 December 2002), operative paragraph 3.

tenure, the UNITA Committee held 43 formal meetings, and issued eight annual reports.⁷¹ The Committee's annual reports generally summarised the activities undertaken by the Committee during the previous calendar year and outlined its observations. In its final report, the Committee made a number of substantive observations and recommendations. The Committee stated that, while the sanctions might not have played a direct role in the development of a promising peace process, it had generally been recognized that the sanctions had weakened UNITA's military potential.⁷² It outlined some lessons that might be drawn from the UNITA sanctions experience, including that: the establishment of the Panel of Experts and the Monitoring Mechanism had significantly enhanced the effectiveness of the sanctions; States often required assistance in enacting the necessary legislation and technical assistance to implement sanctions at the national level; reporting by States on sanctions violations had been invaluable to the work of the Committee and the Monitoring Mechanism; missions by the Chairman of the Committee had been extremely useful; and the use of the internet had helped to maintain transparency in the Committee's work.⁷³

⁷¹ The following annual reports were issued in accordance with the note of the President of the Security Council of 29 March 1995 (S/1995/234): S/1996/37 (17 January 1996), annex: *Report of the Security Council Committee established pursuant to resolution 864 (1993) concerning the situation in Angola* [containing a summary of the activities of the Committee from its establishment until 31 December 1995]; S/1997/33 (14 January 1997), annex: *Report of the 864 Committee for 1996*; S/1997/1027 (31 December 1997), annex: *Report of the 864 Committee for 1997*; S/1998/1227 (28 December 1998), annex: *Report of the 864 Committee for 1998*; S/2000/83 (3 February 2000), annex: *Report of the 864 Committee for 1999*; S/2000/1255 (29 December 2000), annex: *Report of the 864 Committee for 2000*; S/2002/243 (7 March 2002), annex: *Report of the 864 Committee for 2001*; S/2002/1413 (24 December 2002), annex: *Report of the 864 Committee for 2002* [containing a summary of the activities of the Committee from 1 January to 9 December 2002, when the sanctions régime was terminated].

⁷² *Report of the 864 Committee for 2002, ibid*, paragraph 20.

⁷³ *Report of the 864 Committee for 2002*, above note 71, paragraph 21.

In addition to its annual reports, the Committee issued a number of *ad hoc* reports, in response to explicit or implicit requests from the Security Council.⁷⁴ The Chairman of the Committee also circulated *ad hoc* reports on the visits he conducted personally to various countries in May and June 1999, the purpose of which was to explore ways and means to improve the implementation of the UNITA sanctions.⁷⁵ In contrast to the annual reports, the *ad hoc* reports often contained concrete and detailed recommendations on steps that might be taken to facilitate the effective implementation of the sanctions. The major development to arise as a result of the *ad hoc* reports was the establishment of the Panel of Experts on UNITA sanctions.

11.4.3 States

The Security Council called upon States to take a range of action to strengthen the implementation and monitoring of the UNITA sanctions, including: calling upon all States to

⁷⁴ See, e.g.: S/1994/825 (15 July 1994), annex: *Report of the 864 Committee pursuant to paragraph 8 of resolution 932 (1994)*; S/1999/147 (12 February 1999), annex: *Report of the 864 Committee pursuant to paragraph 8 of Security Council resolution 1221 (1999)* [containing the Committee's endorsement of the Secretary-General's recommendations on improving the implementation of the UNITA sanctions (as outlined in his report of 17 January 1999 on the situation in Angola: S/1999/49 (17 January 1999)), as well as extra recommendations made by the Committee itself with a view to improving the implementation of the UNITA sanctions. Those recommendations were subsequently acted upon by the Council in S/RES/1229 (26 February 1999), operative paragraph 8]; S/1999/509 (4 May 1999), annex [transmitting a conceptual framework for expert studies to be conducted to trace violations in the arms, diamond, oil and financial sanctions against UNITA. The framework was submitted in accordance with the recommendations the Committee had made earlier in S/1999/147. Those recommendations had been endorsed by the Council in resolution 1229 (1999), operative paragraph 8]; S/1999/837 (30 July 1999), annex: *List of experts appointed to the expert panels established in accordance with paragraph 6 of Security Council resolution 1237 (1999)*.

⁷⁵ S/1999/644 (4 June 1999), annex: *Letter dated 4 June 1999 from the Chairman of the Security Council Committee established pursuant to resolution 864 (1993) concerning the situation in Angola addressed to the President of the Security Council* [transmitting as an annex a report on the Chairman's visit to Central and Southern Africa, May 1999]; S/1999/829 (28 July 1999), annex: *Letter dated 28 July 1999 from the Chairman of the Security Council Committee established pursuant to resolution 864 (1993) concerning the situation in Angola addressed to the President of the Security Council* [transmitting as an annex a report on the Chairman's visit to Europe and participation in the seventieth ordinary session of the Council of Ministers of the Organization of African Unity, July 1999].

act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations;⁷⁶ calling upon States to bring proceedings against persons and entities violating the sanctions and imposing appropriate penalties;⁷⁷ calling upon all States to cooperate fully with the 864 Committee, including by supplying such information as it sought;⁷⁸ requesting all States to report to the Secretary-General on measures adopted to meet their obligations under the sanctions régime;⁷⁹ reaffirming the obligation of all States to implement fully the sanctions;⁸⁰ urging two neighbouring States which had failed to respond substantively to requests from the 864 Committee for information regarding alleged sanctions violations to do so promptly;⁸¹ calling upon all States to take the necessary actions to implement the sanctions vigorously and strictly;⁸² urging all States to stop travel by their officials and official delegations to UNITA headquarters, except for the purposes of travel to promote the peace process and humanitarian assistance;⁸³ requesting Member States to

⁷⁶ S/RES/864 (15 September 1993), operative paragraph 20; S/RES/1127 (28 August 1997), operative paragraph 10.

⁷⁷ S/RES/864 (15 September 1993), operative paragraph 21.

⁷⁸ S/RES/864 (15 September 1993), operative paragraph 23.

⁷⁹ S/RES/864 (15 September 1993), operative paragraph 24; S/RES/1127 (28 August 1997), operative paragraph 13; S/RES/1135 (29 October 1997), operative paragraph 8.

⁸⁰ S/RES/890 (15 December 1993), operative paragraph 13; S/RES/903 (16 March 1994), operative paragraph 9; S/RES/922 (31 May 1994), operative paragraph 8; S/RES/932 (30 June 1994), operative paragraph 8; S/RES/945 (29 September 1994), operative paragraph 13; S/RES/952 (27 October 1994), preambular paragraph 9; S/RES/966 (8 December 1994), preambular paragraph 10; S/RES/976 (8 February 1995), operative paragraph 12; S/PRST/1995/11 (10 March 1995): *Presidential statement of 10 March 1995*; S/PRST/1995/18 (13 April 1995): *Presidential statement of 13 April 1995*; S/RES/1045 (8 February 1996), operative paragraph 19; S/PRST/1996/19 (24 April 1996): *Presidential statement of 24 April 1996*; S/RES/1055 (8 May 1996), operative paragraph 19; ; S/RES/1064 (11 July 1996), operative paragraph 18; S/RES/1075 (11 October 1996), operative paragraph 17; S/RES/1087 (11 December 1996), operative paragraph 15.

⁸¹ S/RES/932 (30 June 1994), operative paragraph 8.

⁸² S/RES/1075 (11 October 1996), operative paragraph 17; S/RES/1087 (11 December 1996), operative paragraph 15.

⁸³ S/RES/1127 (28 August 1997), operative paragraph 6.

provide to the 864 Committee any information relating to violations of sanctions;⁸⁴ calling upon Member States to implement fully and without delay the sanctions;⁸⁵ calling upon all States to implement strictly the sanctions;⁸⁶ requesting Member States to provide the 864 Committee with information on measures taken to implement the sanctions;⁸⁷ stressing the obligation of Member States to comply with the sanctions;⁸⁸ calling upon Member States to support the peace process in Angola through the full and immediate implementation of the sanctions;⁸⁹ calling upon all Member States to implement the sanctions fully;⁹⁰ calling upon all States to cooperate fully with the expert panels;⁹¹ and calling upon the Governments of the States in which the expert panels would carry out their mandate to cooperate fully with the panels, including by taking a range of steps.⁹²

In April 2000, the Council called upon States to take a range of actions to implement recommendations made by the Panel of Experts on the UNITA sanctions. The Council thus: called upon all States to cooperate with the monitoring mechanism in the

⁸⁴ S/RES/1127 (28 August 1997), operative paragraph 12; S/RES/1157 (20 March 1998), operative paragraph 4; S/RES/1164 (29 April 1998), operative paragraph 14; S/RES/1173 (12 June 1998), operative paragraph 22; S/RES/1295 (18 April 2000), operative paragraph 26.

⁸⁵ S/RES/1157 (20 March 1998), operative paragraph 4; S/RES/1164 (29 April 1998), operative paragraph 14.

⁸⁶ S/RES/1173 (12 June 1998), operative paragraph 18; S/RES/1195 (15 September 1998), operative paragraph 5; S/RES/1202 (15 October 1998), operative paragraph 13.

⁸⁷ S/RES/1173 (12 June 1998), operative paragraph 21; S/RES/1176 (24 June 1998), operative paragraph 4.

⁸⁸ S/RES/1221 (12 January 1999), operative paragraph 7; S/RES/1237 (7 May 1999), operative paragraph 5; S/RES/1295 (18 April 2000), operative paragraph 1.

⁸⁹ S/PRST/1999/3 (21 January 1999): *Presidential statement of 21 January 1999*.

⁹⁰ S/RES/1229 (26 February 1999), operative paragraph 8.

⁹¹ S/RES/1237 (7 May 1999), operative paragraph 8.

⁹² S/RES/1237 (7 May 1999), operative paragraph 9. Those steps included adopting measures to ensure the freedom of movement, independence and security of the panels and their members. For details, see operative paragraphs 9(a)-(f).

discharge of its mandate;⁹³ encouraged all States to exercise due diligence, in order to prevent the diversion or trans-shipment of weapons to unauthorized end-users or unauthorized destinations where such diversion or trans-shipment risked resulting in the violation of sanctions, including by requiring end-use documentation or equivalent measures before exports from their territories were allowed;⁹⁴ encouraged all States to ensure effective monitoring and regulation in the export of weapons, including by private arms brokers;⁹⁵ invited States to convene one or more conferences of representatives of countries that were manufacturers and, in particular, exporters of weapons for the purpose of developing proposals to stem the illicit flow of arms into Angola;⁹⁶ urged that States members of the Southern African Development Community (SADC) be invited to participate in any such conference or conferences;⁹⁷ called upon all States to enforce strictly safety and control regulations relating to the transportation by air of fuel and other hazardous commodities, in particular in the area around Angola, urged States to develop such regulations where they did not yet exist, and requested States to provide relevant information to the IATA, the ICAO and the 864 Committee;⁹⁸ encouraged States to convene a conference of experts to explore possibilities to strengthen the implementation of the financial sanctions against UNITA;⁹⁹ called upon all States to work with financial institutions on their territory to develop procedures to facilitate the identification of funds and

⁹³ S/RES/1295 (18 April 2000), operative paragraph 4; S/RES/1336 (23 January 2001), operative paragraph 7; S/RES/1348 (19 April 2001), operative paragraph 7; S/RES/1374 (19 October 2001), operative paragraph 9; S/RES/1404 (18 April 2002), operative paragraph 8; S/RES/1439 (18 October 2002), operative paragraph 7.

⁹⁴ S/RES/1295 (18 April 2000), operative paragraph 8.

⁹⁵ S/RES/1295 (18 April 2000), operative paragraph 8.

⁹⁶ S/RES/1295 (18 April 2000), operative paragraph 9.

⁹⁷ S/RES/1295 (18 April 2000), operative paragraph 9.

⁹⁸ S/RES/1295 (18 April 2000), operative paragraph 15.

financial assets that might be subject to the sanctions and to facilitate the freezing of such assets;¹⁰⁰ invited States to review the status of officials and representatives of UNITA designated by the 864 Committee and believed to be residing on their territory, with a view to suspending or cancelling their travel documents, visas and residence permits in conformity with the sanctions;¹⁰¹ called upon States that had issued passports to officials of UNITA and adult members of their families designated by the 864 Committee to cancel those passports in conformity with the sanctions and to report to the 864 Committee the status of their efforts in that regard;¹⁰² encouraged States to inform the relevant professional associations and certification bodies of the sanctions, to seek action by those bodies where those measures were violated, and to consult with such bodies with a view to improving the implementation of the sanctions;¹⁰³ and strongly urged States to consider the provision of financial and technical assistance to SADC.¹⁰⁴

The Council also called upon particular States to take action to implement or monitor the sanctions. It called upon Angola itself to implement additional internal and inspection procedures with respect to the distribution of petroleum and petroleum products, for the purpose of enhancing the effectiveness of the sanctions, and invited the Angolan Government to inform the 864 Committee of steps taken in that regard.¹⁰⁵ The Council also called upon Belgium to continue to cooperate with the 864 Committee to devise practical measures to limit access by UNITA to the legitimate diamond market, whilst also calling

⁹⁹ S/RES/1295 (18 April 2000), operative paragraph 20.

¹⁰⁰ S/RES/1295 (18 April 2000), operative paragraph 21.

¹⁰¹ S/RES/1295 (18 April 2000), operative paragraph 22.

¹⁰² S/RES/1295 (18 April 2000), operative paragraph 23.

¹⁰³ S/RES/1295 (18 April 2000), operative paragraph 28.

¹⁰⁴ S/RES/1295 (18 April 2000), operative paragraph 32.

upon other States hosting diamond markets and States closely involved with the diamond industry to cooperate in the same manner with the 864 Committee.¹⁰⁶ The Council also called upon “relevant States” to cooperate with the diamond industry to develop and implement more effective arrangements to ensure that members of the diamond industry worldwide abided by the diamond sanctions, and to inform the 864 Committee of progress in that regard.¹⁰⁷ The Council also urged all States, including those geographically close to Angola, to take immediate steps to enforce, strengthen or enact legislation making it a criminal offence under domestic law for their nationals or other individuals operating on their territory to violate the sanctions, where they had not done so, and to inform the 864 Committee of the adoption of such measures, and invited States to report the results of all related investigations or prosecutions to the Committee.¹⁰⁸

11.4.4 Regional and international organizations

In August 1997, the Council urged regional organizations to stop travel by their officials and official delegations to UNITA headquarters, except for the purposes of travel to promote the peace process and humanitarian assistance.¹⁰⁹ At the same time, the Council also called upon international and regional organizations to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.¹¹⁰

In January 2000, the Council called upon the Southern African Development Community (SADC) to take a range of actions with respect to the implementation and

¹⁰⁵ S/RES/1295 (18 April 2000), operative paragraph 14.

¹⁰⁶ S/RES/1295 (18 April 2000), operative paragraph 17.

¹⁰⁷ S/RES/1295 (18 April 2000), operative paragraph 19.

¹⁰⁸ S/RES/1295 (18 April 2000), operative paragraph 27.

¹⁰⁹ S/RES/1127 (28 August 1997), operative paragraph 6.

monitoring of the sanctions. It thus: encouraged the convening of a conference of experts to devise a régime for curbing the illegal supply of petroleum and petroleum products into areas controlled by UNITA, including physical inspection as well as the broader monitoring of petroleum supply in the area, and further encouraged any such conference to focus on the role of SADC in the implementation of such a régime;¹¹¹ invited SADC to consider the establishment of monitoring activities in the border areas adjacent to Angola for the purpose of reducing the opportunities for the smuggling of petroleum and petroleum products into areas under the control of UNITA, including through the monitoring of fuel supplies and transfers thereof;¹¹² invited SADC to take the lead in establishing an information-exchange mechanism involving petroleum companies and governments to facilitate the flow of information regarding possible illegal diversions of fuel to UNITA;¹¹³ also invited SADC to take the lead in carrying out chemical analysis of fuel samples obtained from petroleum suppliers in the region and using the results to create a database for the purpose of determining the sources of fuel obtained or captured from UNITA;¹¹⁴ invited SADC to consider the introduction of measures to strengthen air traffic control systems in the subregion for the purpose of detecting illegal flight activities across national borders, and further invited it to liaise with the ICAO to consider the establishment of an air traffic régime for the control of regional air space;¹¹⁵ and invited SADC to inform the 864 Committee

¹¹⁰ S/RES/1127 (28 August 1997), operative paragraph 10; S/RES/1173 (12 June 1998), operative paragraph 17.

¹¹¹ S/RES/1295 (18 April 2000), operative paragraph 10.

¹¹² S/RES/1295 (18 April 2000), operative paragraph 11.

¹¹³ S/RES/1295 (18 April 2000), operative paragraph 12.

¹¹⁴ S/RES/1295 (18 April 2000), operative paragraph 13.

¹¹⁵ S/RES/1295 (18 April 2000), operative paragraph 14.

what assistance it required to implement the various requests addressed to it by the Council.¹¹⁶

11.4.5 The Panel of Experts on UNITA sanctions

In May 1999 the Council decided to endorse the idea, proposed by the 864 Committee, of establishing expert panels to facilitate the effective implementation of the UNITA sanctions. In resolution 1237 (1999), the Council outlined the mandate of the panels, which included the following tasks: (a) To collect information relating to the violations of the arms, petroleum, diamond and financial sanctions; (b) To identify those committing or facilitating the violations of those sanctions; and (c) To recommend measures to end such violations and to improve the implementation of the sanctions.¹¹⁷

In late-July 1999, the 864 Committee appointed ten experts to the expert panels.¹¹⁸ The experts came from a variety of countries, possessing expertise in fields conducive to the investigation of violations of different aspects of the multi-faceted UNITA sanctions régime. The experts convened for the first time in late-August 1999, in New York, when they decided that, due to the interconnectedness of the areas to be examined, it would be best to act as one panel rather than two.¹¹⁹ During the six-month period of operation, members of the Panel visited close to thirty countries and met with a wide range of people, including Government officials, diplomats, NGOs, police and intelligence sources, industry

¹¹⁶ S/RES/1295 (18 April 2000), operative paragraph 32.

¹¹⁷ S/RES/1237 (7 May 1999), operative paragraph 6.

¹¹⁸ S/1999/837 (30 July 1999), annex: *List of experts appointed to the expert panels established in accordance with paragraph 6 of Security Council resolution 1237 (1999)*.

¹¹⁹ S/2000/203 (10 March 2000), enclosure: *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, paragraph 8.

associations, corporations and journalists.¹²⁰ The Panel circulated a brief interim report on 30 September 1999 and on 28 February 2000 it submitted its full report to the 864 Committee.¹²¹ The report contained the Panel's findings and conclusions¹²² on violations of the arms, petroleum, diamond and financial sanctions against UNITA, as well as on violations of the diplomatic and travel sanctions against UNITA.¹²³ The Panel made thirty-nine recommendations on how the sanctions violations might be addressed.

11.4.6 The Monitoring Mechanism on UNITA sanctions

In April 2000, the Security Council acted upon one of the recommendations put forth in the report of the Panel of Experts by requesting the Secretary-General to establish a monitoring mechanism on the UNITA sanctions.¹²⁴ The monitoring mechanism would continue the work of the Panel of Experts by collecting additional information on, and

¹²⁰ *Ibid.*

¹²¹ S/1999/1016 (30 September 1999), annex: *Interim report of the Expert Panel established by the Security Council in resolution 1237 (1999) of 7 May 1999*; S/2000/203 (10 March 2000), annex I, enclosure: *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*.

¹²² The Panel noted that the evidentiary standard employed was such that the Panel would only use information that had been corroborated by more than one source in which the Panel had confidence: see Report of the Panel, *ibid.*, paras 11-12.

¹²³ Interestingly, the question of sanctions against UNITA representation and travel was not actually included in the mandate for the Panel as outlined by the Council in resolution 1237 (1999). It is unclear how the Panel came to consider that these sanctions were within the scope of its mandate. In the first paragraph of the Panel's report it notes that resolution 1237 (1999) established it to investigate violations of Security Council sanctions against UNITA. It then lists the "sanctions at issue", among which it includes the travel and representation sanctions, despite the fact that the Council had not included those sanctions within the mandate explicitly outlined for the Panel of Experts in operative paragraph 6 of resolution 1237 (1999).

¹²⁴ S/RES/1295 (18 April 2000), operative paragraph 3. Resolution 1295 (2000) appears to amount to a general endorsement of the recommendations outlined by the Panel of Experts in its report. Interestingly, however, the language of resolution 1295 (2000) is not prescriptive or mandatory. The Council opted to use language such as "requests", "calls upon", and "encourages", instead of the more definitive "decides". The resolution therefore appears to be more a "wish-list" of things that could be done to improve the implementation of the sanctions than a set of mandatory obligations that must be acted upon by States and non-State actors.

investigating relevant leads relating to, allegations of violations of the UNITA sanctions.¹²⁵ It would consist of up to five experts and it would have a time-bound mandate of six months.¹²⁶ After its initial establishment, the mandate of the UNITA monitoring mechanism was extended five times, for one period of three months, three subsequent periods of six months, and a final period of two months.¹²⁷ The size of the mechanism contracted over the course of its mandates, consisting of five experts for the second and third mandates, four experts for the fourth and fifth mandates, and two experts for the final mandate.¹²⁸

During the course of its two-and-a-half-year tenure, the monitoring mechanism submitted a total of six reports.¹²⁹ In each of its reports, the mechanism has outlined the activities undertaken during the period of the most recent mandate, as well as various findings, conclusions and recommendations. Among the monitoring mechanism's major

¹²⁵ S/RES/1295 (18 April 2000), operative paragraph 3.

¹²⁶ S/RES/1295 (18 April 2000), operative paragraph 3. There was a subtle difference in the method of appointing experts for the monitoring mechanism, *vis-à-vis* the Panel of Experts. The experts for the Panel were appointed by the 864 Committee, whereas the Council requested the Secretary-General to appoint the experts for the monitoring mechanism.

¹²⁷ See: S/RES/1336 (23 January 2001), operative paragraph 3 [extending the mechanism's mandate for three months]; S/RES/1348 (19 April 2001), operative paragraph 3 [extending the mechanism's mandate for six months]; S/RES/1374 (19 October 2001), operative paragraph 3 [extending the mechanism's mandate for a further six months]; S/RES/1404 (18 April 2002), operative paragraph 3 [extending the mechanism's mandate for a further six months]; S/RES/1439 (18 October 2002), operative paragraph 2 [deciding to extend the mechanism's mandate for a further two months].

¹²⁸ See: S/RES/1336 (23 January 2001), operative paragraph 5 [requesting the Secretary-General to reappoint five experts to the monitoring mechanism]; S/RES/1348 (19 April 2001), operative paragraph 5 [requesting the Secretary-General to appoint five experts to the monitoring mechanism]; S/RES/1374 (19 October 2001), operative paragraph 7 [requesting the Secretary-General to appoint four experts to the monitoring mechanism]; S/RES/1404 (18 April 2002), operative paragraph 6 [requesting the Secretary-General to appoint four experts to the monitoring mechanism]; S/RES/1439 (18 October 2002), operative paragraph 5 [requesting the Secretary-General to appoint two experts to the monitoring mechanism].

¹²⁹ S/2000/1225 (21 December 2000), enclosure: *Final Report of the Monitoring Mechanism on Angola Sanctions*; S/2001/363 (18 April 2001), enclosure: *Addendum to the final report of the Monitoring Mechanism on Sanctions against UNITA*; S/2001/966 (12 October 2001), enclosure: *Supplementary report of the Monitoring Mechanism on Sanctions against UNITA*; S/2002/486 (26 April 2002), annex: *Additional report of the Monitoring Mechanism on Sanctions against UNITA*; S/2002/1119 (16 October 2002), annex: *Additional report of the*

initiatives, it has: (a) Identified individuals and companies involved in activities that violate, or promote violation of, the UNITA sanctions; (b) Identified States that have been complicit in activities that violate, or promote violation of, the UNITA sanctions; (c) Commissioned a professional asset tracer to investigate the flow of UNITA's financial assets; and (d) Identified, and monitored the activities of, individuals and non-governmental organisations who appear to have been acting as foreign representatives of UNITA.¹³⁰

Among the major recommendations made by the monitoring mechanism have been that:

(a) Better networks of regulatory bodies should be established in the spheres most relevant to the effective implementation of sanctions – for instance, the establishment of an effective international regulatory régime for diamonds, and the promotion of better cooperation among SADC Member States in the implementation, monitoring and enforcement of the UNITA sanctions; and (b) The Security Council should establish a permanent mechanism to monitor its sanctions.¹³¹

11.5 The Suspension and Termination of the UNITA sanctions régime

In May 2002, after the death of the UNITA leader Jonas Savimbi, and when it appeared that the decades-long conflict between UNITA and the Angolan Government was drawing to a close, the Security Council narrowed the scope of the sanctions by suspending

Monitoring Mechanism on Sanctions against UNITA; S/2002/1339 (10 December 2002), annex: *Final report of the Monitoring Mechanism on Sanctions against UNITA*.

¹³⁰ For further details of the monitoring mechanism's activities, see the chapter below containing a case-study on the UNITA sanctions régime.

¹³¹ For further details of the mechanism's recommendations, see the chapter below containing a case-study on the UNITA sanctions régime.

the travel sanctions against UNITA officials and their families.¹³² In December 2002, the Council welcomed the steps taken by the Angolan Government and UNITA toward the full implementation of the Acordos de Paz, the Lusaka Protocol, relevant Security Council resolutions and other recent initiatives aimed at achieving peace.¹³³ It then terminated the sanctions régime,¹³⁴ and dissolved the 864 Committee.¹³⁵

11.6 Notable aspects of the UNITA sanctions régime

The UNITA sanctions régime exhibited a number of noteworthy characteristics. First, as with the sanctions imposed against the Bosnian Serbs, the UNITA sanctions régime targeted a sub-state entity. Second, the Council applied diamond sanctions for the first time, prohibiting the export of diamonds from UNITA-controlled areas in an attempt to address the link between the diamond trade and the flow of illicit weapons. Third, in its resolutions outlining the contours of the UNITA sanctions régime, the Council continued the trend - initiated with the regime against Libya and utilised in the sanctions régimes against the Federal Republic of Yugoslavia (Serbia-Montenegro), the Bosnian Serbs and Haiti - of using time-delays before the entry into force of the sanctions, thus providing the target with a “period of grace” in which to avoid the application of sanctions by complying with the Council’s demands.¹³⁶ Fourth, the UNITA sanctions régime witnessed what appear to be

¹³² S/RES/1412 (17 May 2002), operative paragraph 1. The suspension was for a period of ninety days. In August 2002, the Council extended the suspension of those for a further ninety days: S/RES/1432 (15 August 2002), operative paragraph 1.

¹³³ S/RES/1448 (9 December 2002), preambular paragraph 3. The other recent initiatives included a Memorandum of Understanding dated 4 April 2002 [S/2002/483 (26 April 2002), annex], a declaration on the peace process by the Angolan Government [S/2002/1337 (6 December 2002), annex], and the completion of the work of a Joint Commission.

¹³⁴ S/RES/1448 (9 December 2002), operative paragraph 2.

¹³⁵ S/RES/1448 (9 December 2002), operative paragraph 3.

¹³⁶ See, e.g.: S/RES/864 (15 September 1993), operative paragraph 17 [deciding that the sanctions would enter into force ten days later, unless the Secretary-General notified it that an effective

the first visits to the field of a Chairman of a Sanctions Committee. Fifth, in its efforts to improve the implementation of the UNITA sanctions régime, the Council established its first Panel of Experts to explore the violations of a sanctions régime. Sixth, the Council also established the first monitoring mechanism to explore violations of a sanctions régime. Seventh, as the sanctions were terminated ten days before the expiration of the final mandate of the monitoring mechanism, an interesting situation arose in which a Sanctions Committee, which is generally considered to be the conduit to the Council of the findings and reports of other subsidiary organs such as Panels of Experts and monitoring mechanisms, was in fact dissolved prior to the conclusion of the activities of its monitoring mechanism. Eighth, the Council considered the possibility of imposing communications sanctions against UNITA.¹³⁷ Finally, in one of its resolutions related to the UNITA sanctions régime, the Security Council

cease-fire had been established and that agreement had been reached on the implementation of the Peace Accords and relevant Security Council resolutions]; S/RES/1127 (28 August 1997), operative paragraph 7 [deciding that the sanctions would enter into force thirty-three days later, unless it were to decide, on the basis of a report by the Secretary-General, that UNITA had taken concrete and irreversible steps to comply with the obligations enunciated in that resolution]; S/RES/1173 (12 June 1998), operative paragraph 14 [deciding that the sanctions would enter into force thirteen days later, unless it were to decide, on the basis of a report by the Secretary-General, that UNITA had fully complied by 23 June 1998 with all its obligations under that resolution].

It is noteworthy that, on two occasions, the Council extended the initial date for the application of sanctions, in response to what appeared to be positive developments on the ground. The date for the entry into force of the sanctions outlined in resolution 1127 (1997), initially set for 30 September 1997 (S/RES/1127 (28 August 1997), operative paragraph 7), was delayed for a period of thirty days: S/RES/1130 (29 September 1997), operative paragraph 2 [delaying the entry into force until 30 October 1997]. The date for the entry into force of resolution 1173 (1998), initially set for 25 June 1998, was also delayed, this time by six days: S/RES/1176 (24 June 1998), operative paragraph. In both cases, the additional time seemed to be permitted in response to observations made by the Secretary-General relating to potential positive developments on the ground.

¹³⁷ S/RES/1221 (12 January 1999), operative paragraph 8 [expressing its readiness to consider the imposition of telecommunications sanctions and requesting the 864 Committee to explore and report on that possibility].

made a rare explicit reference to Article 41 of the Charter of the United Nations – the legal and constitutional basis for the application of sanctions.¹³⁸

¹³⁸ S/RES/1295 (18 April 2000), operative paragraph 6.

12. The Rwanda sanctions régime

The Security Council imposed sanctions against Rwanda in May 1994, in an attempt to address ongoing violence. The sanctions régime, which consists of an arms embargo, has remained in place for almost a decade. The scope of the régime has not changed, but the application of the arms embargo has been narrowed slightly, from an embargo against the sale or supply of arms and related *matériel* to the territory of Rwanda in general, to an embargo against the sale or supply of arms and related *matériel* to non-Government entities in Rwanda or entities in States neighbouring who might forward them to non-Government entities in Rwanda.

12.1 The constitutional basis for imposing sanctions against Rwanda

In May 1994, the Security Council strongly condemned the ongoing violence in Rwanda,¹ and expressed its deep concern that the consequences of the violence in Rwanda, including the internal displacement of a significant percentage of the Rwandan population and the massive exodus of refugees, constituted a humanitarian crisis of “enormous proportions”.² Noting that it was deeply disturbed by the magnitude of the human suffering caused by the conflict and that it was concerned that the continuation of the situation in Rwanda constituted a threat to peace and security in the region,³ the Council proceeded to determine that the situation in Rwanda did in fact constitute a threat to peace and security in

¹ S/RES/918 (17 May 1994), preambular paragraph 5.

² S/RES/918 (17 May 1994), preambular paragraph 8.

³ S/RES/918 (17 May 1994), preambular paragraph 18.

the region,⁴ and to invoke Chapter VII of the Charter of the United Nations,⁵ before imposing sanctions against Rwanda.⁶ In subsequent decisions related to the Rwandan sanctions régime, the Council again invoked Chapter VII of the Charter, without explicitly determining the continuing existence of a threat to peace and security.⁷

12.2 The objectives of the Rwanda sanctions régime

The Security Council did not articulate an explicit objective in connection with the Rwanda sanctions régime. Various provisions of the resolution establishing the sanctions suggest, however, that the main objectives of the arms embargo were the establishment of a cease-fire and the achievement of a peaceful settlement to the conflict, within the framework of the Arusha Peace Agreement.⁸

12.3 The scope of the Rwanda sanctions régime

The sanctions régime against Rwanda initially consisted of a prohibition upon the sale or supply to Rwanda of arms and related *matériel*.⁹ In June 1995, the Council affirmed that the Rwanda sanctions régime prevented the sale or supply of arms and related *matériel*

⁴ S/RES/918 (17 May 1994), section B, preambular paragraph 1.

⁵ S/RES/918 (17 May 1994), section B, preambular paragraph 2.

⁶ S/RES/918 (17 May 1994), operative paragraph 13.

⁷ S/RES/1005 (17 July 1995), preambular paragraph 6; S/RES/1011 (16 August 1995), section B, preambular paragraph 1.

⁸ See, e.g., S/RES/918 (17 May 1994), preambular paragraph 6 [stressing the importance of the Arusha agreement to the peaceful resolution of the conflict in Rwanda and the necessity for the parties to the conflict to implement that agreement], operative paragraph 1 [demanding that the parties to the conflict immediately cease hostilities, agree to a cease-fire, and bring an end to the violence in Rwanda], and operative paragraph 19 [inviting the Secretary-General and his Special Representative, in coordination with the Organization of African Unity and countries in the region, to continue their efforts to achieve a political settlement in Rwanda within the framework of the Arusha Peace Agreement].

⁹ S/RES/918 (17 May 1994), operative paragraph 13. The Council outlined exemptions from the arms sanctions, however, for activities related to the United Nations Assistance Mission for Rwanda (UNAMIR) and the United Nations Observer Mission Uganda-Rwanda (UNAMUR): S/RES/918 (17 May 1994), operative paragraph 16.

to persons in States neighbouring Rwanda, if such sale or supply was for eventual use in Rwanda.¹⁰

In July 1995, the Council outlined an exemption from the sanctions régime, for explosives that were to be used for the purpose of demining, when authorized by the Rwanda Sanctions Committee.¹¹ In August 1995, the Council narrowed the scope of the sanctions slightly, deciding that the sanctions régime would not apply to the sale or supply of arms and related *matériel* to the Government of Rwanda.¹² At the same time, the Council also decided that the Rwandan Government could not resell arms or related *matériel* to any neighbouring States or to any person not in its service. In addition, the Council also required States to notify the Rwanda Sanctions Committee of any exports of arms and related *matériel* to the Rwandan Government.¹³

12.4 The administration, monitoring and enforcement of the Rwanda sanctions régime

The Security Council has established two subsidiary entities to facilitate the administration and implementation of the Rwanda sanctions régime: the Rwanda Sanctions Committee (also referred to as the “918 Committee”) and the Commission of Inquiry on Rwanda Sanctions. In addition, the Council has also called upon the Secretary-General and States to take additional steps to facilitate the implementation of the sanctions.

¹⁰ S/RES/997 (9 June 1995), operative paragraph 4. The Council reaffirmed this provision in S/RES/1011 (16 August 1995), operative paragraph 9.

¹¹ S/RES/1005 (17 July 1995), operative paragraph 1 (NB: the paragraph is not actually numbered, as it is the only operative paragraph in the resolution).

¹² S/RES/1011 (16 August 1995), operative paragraphs 7 and 8. Operative paragraph 7 provided that the sale or supply of arms and related *matériel* could take place via specified entry points until 1 September 1996. Operative paragraph 8 provided that after 1 September 1996 the sale or supply of arms and related *matériel* could take place in general, unless the Security Council were to decide otherwise prior to that date.

¹³ S/RES/1011 (16 August 1995), operative paragraph 11.

12.4.1 The Rwanda Sanctions Committee

When the Security Council established the Rwanda sanctions régime it also created a Sanctions Committee to oversee the administration of the sanctions régime itself.¹⁴ The Committee was established, in accordance with rule 28 of the Council's provisional rules of procedure, with a mandate to report on its work to the Council with its observations and recommendations and to perform the following tasks: (a) To seek from all States information regarding action taken to implement the arms embargo;¹⁵ (b) To consider information concerning violations of the embargo and to make recommendations to the Council on increasing the effectiveness of the embargo;¹⁶ and (c) To recommend appropriate measures in response to violations of the embargo and to provide information on a regular basis to the Secretary-General, for general distribution to Member States.¹⁷

In April 1995, the Council requested that the Committee consider information provided by States and organizations on the transport of arms into countries neighbouring Rwanda for eventual use in Rwanda.¹⁸ In July 1995, the Council created another task for the Committee, deciding that it would receive applications, and provide authorisation where appropriate, for exemptions from the arms embargo for explosives to be used in humanitarian demining programmes.¹⁹ In August 1995, the Council decided that the Rwanda Committee would also assume the following duties: (a) To receive notifications from all States of all exports from their territories of arms or related *matériel* to Rwanda; (b) To

¹⁴ S/RES/918 (17 May 1994), operative paragraph 14.

¹⁵ S/RES/918 (17 May 1994), operative paragraph 14(a).

¹⁶ S/RES/918 (17 May 1994), operative paragraph 14(b).

¹⁷ S/RES/918 (17 May 1994), operative paragraph 14(c).

¹⁸ S/PRST/1995/22 (27 April 1995): *Presidential statement of 27 April 1995*.

¹⁹ S/RES/1005 (17 July 1995), sole operative paragraph.

receive notification from the Government of Rwanda of all imports it received of arms and related *matériel*; and (c) To report regularly to the Council on notifications so received.²⁰ In April 1998, when the Council requested the Secretary-General to reactivate the International Commission of Inquiry, it called upon relevant United Nations bodies, including the 918 Committee, to collate information in their possession relating to the mandate of the Commission of Inquiry, and to make that information available to the Commission as soon as possible.²¹

The Rwanda Sanctions Committee has not been among the more active of Sanctions Committees. Since its establishment almost a decade ago, the Committee has held seven formal meetings,²² and issued eight annual reports.²³ The Committee's annual reports have tended to be brief, with few substantive recommendations or observations. The Committee has consistently noted that its ability to monitor the sanctions effectively is dependent upon the cooperation of States and organizations in a position to provide it with

²⁰ S/RES/1011 (16 August 1995), operative paragraph 11. The Committee thus submitted the following reports: S/1996/329 (2 May 1996) & Rev.1 (27 August 1996); S/1996/396 (30 May 1996) & Rev. 1 (27 August 1996); S/1996/407 (5 June 1996) & Rev. 1 (27 August 1996); S/1996/697 (27 August 1996).

²¹ S/RES/1161 (9 April 1998), operative paragraph 2.

²² The last official record of a meeting by the Rwanda Sanctions Committee is to be found in: *Index to Proceedings of the Security Council for 1998* (1999) United Nations, New York, p. xiv. The seventh meeting took place on 6 January 1998.

²³ As with the annual reports of other Sanctions Committees, the reports for the 918 Committee were all issued in accordance with the note of the President of the Security Council of 29 March 1995 (S/1995/234): S/1996/82 (2 February 1996), annex: *Report of the Security Council Committee established pursuant to resolution 918 (1994) concerning Rwanda*, [hereafter "*First Report of the 918 Committee*"], outlining the committee's activities from its establishment until 31 December 1995; S/1997/15 (7 January 1997), annex: *Report of the 918 Committee for 1996*; S/1997/1028 (31 December 1997), annex: *Report of the 918 Committee for 1997*; S/1998/1219 (24 December 1998), annex: *Report of the 918 Committee for 1998*; S/1999/1292 (30 December 1999), annex: *Report of the 918 Committee for 1999*; S/2000/1227 (22 December 2000), annex: *Report of the 918 Committee for 2000*; S/2002/49 (14 January 2002), annex: *Report of the 918 Committee for 2001*; S/2002/1406 (24 December 2002), annex: *Report of the 918 Committee for 2002*.

pertinent information.²⁴ In its 1998 annual report, the Committee also endorsed operative paragraph 2 of resolution 1196 (1998), which was concerned with the implementation of arms embargoes in general, which encouraged Member States to consider, as a means of implementing obligations under arms embargoes, the adoption of legislation or other legal measures making the violation of Security Council arms embargoes a criminal offence.²⁵ The Committee also expressed its intention to consider appropriate steps to improve the monitoring of the arms embargo, including by establishing channels of communication with relevant regional organizations and subregional organizations.²⁶

12.4.2 The Secretary-General

When the Security Council established the Rwanda sanctions régime, it simply requested the Secretary-General to make the necessary arrangements in the Secretariat to provide assistance to the Rwanda Sanctions Committee.²⁷ In June 1995, the Security Council further requested the Secretary-General to consult the Governments of countries neighbouring Rwanda on the possibility of deploying observers to monitor the implementation of the Rwandan sanctions and to report back to the Council on the matter within a month.²⁸ In August 1995, the Council requested the Secretary-General to make recommendations on the establishment of a commission to investigate allegations of arms

²⁴ See, e.g., *Report of the 918 Committee for 1996*, *ibid*, paragraph 10; *Report of the 918 Committee for 1997*, *ibid*, paragraph 5; *Report of the 918 Committee for 1998*, *ibid*, paragraph 5; *Report of the 918 Committee for 1999*, *ibid*, paragraph 5; *Report of the 918 Committee for 2000*, *ibid*, paragraph 5; *Report of the 918 Committee for 2001*, *ibid*, paragraph 5; *Report of the 918 Committee for 2002*, *ibid*, paragraph 5.

²⁵ *Report of the 918 Committee for 1998*, above note 23, paragraph 5.

²⁶ *Ibid*, paragraph 6.

²⁷ S/RES/918 (17 May 1994), operative paragraph 17.

²⁸ S/RES/997 (9 June 1995), operative paragraph 6. The Secretary-General submitted the requested report in July 1995: S/1995/552 (9 July 1995): *Report of the Secretary-General on the implementation of paragraph 6 of Security Council resolution 997 (1995) of 9 June 1995*.

flows to former Rwandese Government Forces in the Great Lakes region,²⁹ and encouraged the Secretary-General to continue his consultations with Governments of neighbouring States concerning the deployment of United Nations military observers at airfields and transportation points in and around border crossings.³⁰ At the same time, the Council also requested the Secretary-General to notify Member States of the locations listed by the Government of Rwanda as points of entry through which arms exempt from the embargo might enter the country.³¹ At the same time, the Council also requested the Secretary-General to report to it in six months, and again in twelve months, on the legitimate export of arms to Rwanda in accordance with approved exemptions.³²

In September 1995, the Security Council requested the Secretary-General to establish an International Commission of Inquiry, which would investigate violations of the arms embargo and to make recommendations for improving the embargo's implementation.³³ The Council also requested the Secretary-General to report to it on the establishment of the Commission and to submit both an interim and a final report.³⁴ In April 1996, the Security Council requested the Secretary-General: (a) To maintain the International Commission of Inquiry;³⁵ (b) To consult with States neighbouring Rwanda, and in particular Zaire, on appropriate measures for better implementing the arms embargo and

²⁹ S/RES/1011 (16 August 1995), operative paragraph 2.

³⁰ S/RES/1011 (16 August 1995), operative paragraph 4.

³¹ S/RES/1011 (16 August 1995), operative paragraph 7.

³² S/RES/1011 (16 August 1995), operative paragraph 12. The following reports were thus submitted by the Secretary-General: S/1996/202 (15 March 1996); S/1996/663 (15 August 1996) & Rev.1/Add.1 (30 August 1996).

³³ S/RES/1013 (7 September 1995), operative paragraph 1. For further details relating to the mandate and activities of the Commission, see below.

³⁴ S/RES/1013 (7 September 1995), operative paragraph 4. The interim report was to be submitted three months after the establishment of the Commission and the final report was to be submitted as soon as possible thereafter.

detering shipments of arms to former Rwandan government forces, including through the deployment of United Nations observers;³⁶ and (c) To submit a report to it by 1 October 1996 on the implementation of resolution 1053 (1996).³⁷ Two years later, in April 1998, the Council requested the Secretary-General to re-activate the International Commission of Inquiry,³⁸ and to submit to it within three months an interim report by the Commission, and a final report of the Commission within six months.³⁹

12.4.3 The Commission of Inquiry on Rwanda (ICIR)

In September 1995, the Security Council requested the Secretary-General to establish, as a matter of urgency, an International Commission of Inquiry. The Commission, which would consist of five to ten impartial and internationally respected persons, including legal, military and police experts, under the Chairmanship of an eminent person,⁴⁰ was to have the following mandate: (a) Collecting information and investigate reports relating to the sale or supply of arms and related *matériel* to former Rwandan government forces in the Great Lakes region, in violation of Council resolutions 918 (1994), 997 (1995) and 1011 (1995); (b) Investigating allegations that such forces were receiving military training in order to destabilize Rwanda; (c) Identifying parties aiding and abetting the illegal acquisition

³⁵ S/RES/1053 (23 April 1996), operative paragraph 2.

³⁶ S/RES/1053 (23 April 1996), operative paragraph 7.

³⁷ S/RES/1053 (23 April 1996), operative paragraph 12.

³⁸ S/RES/1161 (9 April 1998), operative paragraph 1.

³⁹ S/RES/1161 (9 April 1998), operative paragraph 7.

⁴⁰ S/RES/1013 (7 September 1995), operative paragraph 2. Six people were appointed to the Commission in mid-October 1995, and they began work shortly thereafter. The six people were: Ambassador Kassem, Egypt (Chairman); Inspector Hanssens, Canada; Colonel Almeling, Germany; Lt. Colonel Mijvogel, Netherlands; Brigadier Alam, Pakistan; and Colonel Mutanda, Zimbabwe: S/1995/879 (20 October 1995): *Letter dated 16 October from the Secretary-General to the President of the Security Council*.

of arms by former Rwandan government forces, in violation of the sanctions; and
(d) Recommending measures to end the illegal flow of arms in the subregion.⁴¹

The Commission's mandate was initially for a short-term period,⁴² but it was subsequently maintained or re-activated by the Council on two occasions. In April 1996, the Security Council requested the Secretary-General to maintain the Commission, with a mandate to follow up its earlier investigations and to pursue any further allegations of violations of the arms embargo.⁴³ In April 1998, the Security Council requested the Secretary-General to re-activate the Commission, with a mandate to undertake the following tasks: (a) Collecting information and investigating reports relating to the sale, supply and shipment of arms and related *matériel* to former Rwandan government forces and militias in the Great Lakes region, in violation of the arms embargo;⁴⁴ (b) Identifying parties aiding and abetting the acquisition of arms and related *matériel* by former Rwandan government forces, in violation of the arms embargo;⁴⁵ and (c) Making recommendations relating to the illegal flow of arms in the Great Lakes region.⁴⁶

During its tenure, the International Commission of Inquiry submitted a total of six reports to the Council.⁴⁷ In its reports the Commission outlined its activities and provided

⁴¹ S/RES/1013 (7 September 1995), operative paragraph 1.

⁴² S/RES/1013 (7 September 1995), operative paragraph 4. Interestingly, the Council did not specify a duration for the Commission's mandate, but it did request the Secretary-General to submit, within three months from the Commission's establishment, an interim report on the Commission's findings, and to submit a final report as soon as possible thereafter, thus implying that the mandate would not be much longer than three months.

⁴³ S/RES/1053 (23 April 1996), operative paragraph 2.

⁴⁴ S/RES/1161 (9 April 1998), operative paragraph 1(a).

⁴⁵ S/RES/1161 (9 April 1998), operative paragraph 1(b).

⁴⁶ S/RES/1161 (9 April 1998), operative paragraph 1(c).

⁴⁷ S/1996/67 (29 January 1996), annex: *Interim report of the International Commission of Inquiry on the Rwanda arms embargo* (hereafter "*First Report of the ICIR*"); S/1996/195 (14 March 1996), annex: *Report of the International Commission of Inquiry on the Rwanda arms embargo* (hereafter "*Second Report of the ICIR*"); S/1997/1010 (24 December 1997), annex:

observations, conclusions and recommendations. In its first report, completed in January 1996, the Commission noted that its activities to date had taken place mainly in Rwanda, Zaire and the region, whilst it had also approached a number of Governments whose nationals were alleged to have been involved in violations of the arms embargo, including Bulgaria, China, France, Seychelles, South Africa and Zaire.⁴⁸ In its conclusions, the Commission stated that, although it had gathered a lot of information in relation to alleged violations of the arms embargo, it was not in a position to confirm allegations that arms and related *matériel* had been sold or supplied to the former Rwandan government forces in violation of the sanctions.⁴⁹ The Commission nevertheless believed that Rwandan men were in fact receiving military training to conduct destabilizing raids into Rwanda.⁵⁰ It also noted that it had not yet been able to establish that specific Governments, companies or individuals had aided or abetted the sale or supply of arms and related *matériel* to the former Rwandan government forces in violation of the sanctions, but observed that it would report any further information that might be discovered in its final report.⁵¹

Final report of the International Commission of Inquiry on the Rwanda arms embargo (hereafter "*Third Report of the ICIR*"). This report was originally annexed to a letter dated 1 November 1996 from the Secretary-General to the President of the Security Council, but it was not circulated as an official document of the Council until more than a year later); S/1998/63 (26 January 1998), annex: *Addendum to the final report of the International Commission of Inquiry on the Rwanda arms embargo* (hereafter "*Fourth Report of the ICIR*"); S/1998/777 (19 August 1998), annex: *Interim report of the International Commission of Inquiry (Rwanda)* (hereafter "*Fifth Report of the ICIR*"); S/1998/1096 (18 November 1998), annex: *Final report of the International Commission of Inquiry (Rwanda)* (hereafter "*Sixth Report of the ICIR*").

⁴⁸ *Interim report of the International Commission of Enquiry on the Rwandan arms embargo*, *ibid*, paragraphs 14-54.

⁴⁹ *Ibid*, paragraph 67(a).

⁵⁰ *Ibid*, paragraph 67(b).

⁵¹ *Ibid*, paragraph 67(c).

In its second report, issued at the end of its first mandated period, the Commission summarised its activities,⁵² outlined a case-study of allegations that arms had been delivered to former Rwandan government forces in Zaire, via the Seychelles, in violation of the Rwandan arms embargo,⁵³ and made a number of general recommendations that were designed to facilitate the implementation of Security Council arms embargoes in general, as well as some detailed recommendations with the aim of improving the implementation of the Rwandan arms embargo in particular. The Commission's general recommendations included that: (a) Upon the imposition of an arms embargo against a State or a part thereof, the Security Council should consider urging neighbouring States to establish within their respective Governments an office to monitor, implement and enforce the embargo within its

⁵² See: *Second report of the ICIR*, above note 47, paragraphs 7-20, 40-51. The Commission had few additional findings, due to the fact that the cooperation of other Governments whose activities it had attempted to investigate had been less than ideal: *Second report of the ICIR*, above note 47, paragraphs 71-73. Among the States subject to investigation by the Commission were Bulgaria, Burundi, China, France, South Africa, Tanzania and Uganda.

⁵³ *Ibid*, paragraphs 21-39. The Commission's investigations centred upon allegations that had appeared in a Human Rights Watch report: *Rearming with impunity: international support for the perpetrators of the Rwandan genocide* (1995) Washington, D.C., USA 1995, also available on-line at: <http://www.hrw.org/reports/1995/Rwanda1.htm> (last visited 15 July 2004). In that report HRW reported that shipments of arms had found their way into the possession of the former-Rwandan Government military forces, via Zaire. The Commission concluded that the report was accurate and that two shipments of arms, originating in the Seychelles, had indeed made their way into the hands of Rwandan Government forces: *ibid*, paragraph 64. Authorities in the Seychelles had authorized the sale with the understanding that they intended for use in Zaire, as they had been provided with "end-user certificates", purportedly issued by the Government of Zaire. Once it became apparent that the shipments might have been delivered to a destination other than Zaire, the Seychelles cancelled subsequent additional scheduled shipments: *ibid*, paragraph 65. Ironically, the arms had originally been seized by the Seychelles from a ship named Malo because they were being transported to Somalia in violation of the United Nations sanctions régime against that country: *ibid*, paragraph 29. The Commission found that two individuals were instrumental in facilitating the shipments – Colonel Théoneste Bagora, a high-ranking officer of the former-Rwandan government forces, and Mr. William Ehlers, a South African National who was the director of a company called "Delta Aero". It further concluded that it was highly probable that a violation of the sanctions had taken place, involving the supply of more than 80 tons of rifles, grenades and ammunition in two consignments flown to Goma airport on 17 and 19 June 1994 and subsequently transferred to the Rwandan government forces, then in Gisenyi, Rwanda. It also concluded that the Government of Zaire, or elements thereof, had aided and abetted the violation. It also recommended that there should be further investigation into the role of Mr. Ehlers.

own territory and to gather information that might be used by investigating bodies dispatched by the Council;⁵⁴ (b) Where the States concerned could not staff and equip such offices within their existing resources, consideration be given to establishing a trust fund, within the context of Article 50 of the United Nations Charter, to provide such assistance;⁵⁵ (c) The Council consider expanding the functions of future sanctions committees, to include liaising with the offices in neighbouring States, as well as receiving, analysing and circulating to Member States reports submitted by those offices;⁵⁶ (d) The Governments of the Great Lakes region intensify their efforts: to ensure that their territory was not used for the recruitment or training of refugees, nor as a base from which to launch attacks against any other country; and to prevent military training and the sale or supply of weapons to militia groups or other groups among the refugees;⁵⁷ (e) Neighbouring States should be encouraged to participate in maintaining a register or data bank of movements and acquisitions of small arms, ammunition and *matériel*;⁵⁸ (f) Countries supplying arms be requested not to transfer such arms to non-State entities or private businessmen.⁵⁹

Among the more specific recommendations outlined by the Commission, and applicable to the sanctions régime against Rwanda, were that: (a) The Council should consider inviting the Government of South Africa to investigate the participation of Mr. William Ehlers in the negotiations that had led to the delivery of arms to former Rwandan

⁵⁴ *Ibid*, paragraph 77.

⁵⁵ *Ibid*, paragraph 79.

⁵⁶ *Ibid*, paragraph 80.

⁵⁷ *Ibid*, paragraph 82.

⁵⁸ *Ibid*, paragraph 84.

⁵⁹ *Ibid*, paragraph 85.

armed forces in Goma, Zaire, in violation of the sanctions;⁶⁰ (b) The Council should consider calling upon the Government of Bulgaria to make available to the 918 Committee the findings of an internal investigation into allegations that a Bulgarian company had been willing to sell arms in violation of Security Council resolutions;⁶¹ (c) The Council should call upon the Government of Zaire to investigate the apparent complicity of its own personnel and officials in the purchase of arms from the Seychelles;⁶² (d) The Council should consider inviting the Government of Zaire to station United Nations observers on its territory to monitor the implementation of the sanctions against Rwanda and to deter future violations;⁶³ (e) The Council should consider facilitating the establishment of a domestic group, within Zaire, to monitor the sanctions, perhaps in coordination with the OAU under Chapter VIII of the Charter;⁶⁴ and (f) The Council should consider retaining the Commission itself, or the creating another, similar body, in order to follow up the Commission's investigations and to report periodically to the Secretary-General on compliance with Security Council resolutions.⁶⁵

In its third report, completed in October 1996,⁶⁶ the Commission summarised its recent activities,⁶⁷ and provided observations, conclusions and recommendations.⁶⁸ Among

⁶⁰ *Ibid*, paragraph 86.

⁶¹ *Ibid*, paragraph 87.

⁶² *Ibid*, paragraph 88.

⁶³ *Ibid*, paragraph 91(a).

⁶⁴ *Ibid*, paragraph 91(b).

⁶⁵ *Ibid*, paragraph 91(c).

⁶⁶ See: *Third report of the ICIR*, above note 47. As noted above, this report was originally annexed to a letter dated 1 November 1996 from the Secretary-General to the President of the Security Council, but it was not circulated as an official document of the Council until more than a year later.

⁶⁷ *Ibid*, paragraphs 9-103. During the reporting period, the Commission expanded the range of States and organizations contacted, approaching the Governments of eighteen States, as well as the Rwanda Sanctions Committee, the International Criminal Tribunal for Rwanda (ICTR),

the Commission's recommendations were that: (a) Consideration should be given to requesting States producing arms and *matériel* to take any measures necessary under their domestic law to implement the provisions of the arms embargo, and in particular to prosecute their nationals involved in violations of the embargo;⁶⁹ (b) The Security Council should urgently call upon the Government of Zaire not to allow foreign groups to operate from its soil and to identify steps it could take to improve the situation, such as putting an end to the sale or supply of arms and related *matériel* and assistance or training to those groups;⁷⁰ (c) United Nations observers should be deployed in order to deter or reduce the potential for arms shipments;⁷¹ (d) The Security Council should consider expanding the sanctions to include a freeze on the assets of individuals and organizations involved in raising funds to finance the insurgency against Rwanda;⁷² (e) The Security Council should encourage the Tanzanian authorities to liaise with UNHCR and to consult with the International Criminal Tribunal for Rwanda (ICTR) to see if legal grounds existed for detaining people accused of intimidating people in Rwandan refugee camps so that they participated in acts that violated the arms embargo;⁷³ and (f) The Security Council should urge Rwanda to take all possible measures to create a climate conducive to the harmonious

the International Civil Aviation Organization (ICAO), Amnesty International and Human Rights Watch: for details, see paragraphs 37-75.

⁶⁸ *Ibid*, paragraphs 104-119.

⁶⁹ *Ibid*, paragraph 110. The Commission noted that some States had reported that they were unable to prosecute nationals accused of crimes in a third country. It therefore recommended that Member States be invited to introduce into their domestic legislation the capacity to prosecute such individuals.

⁷⁰ *Ibid*, paragraph 112.

⁷¹ *Ibid*, paragraph 113.

⁷² *Ibid*, paragraph 114.

⁷³ *Ibid*, paragraph 115.

reintegration of refugees, in order to encourage their return.⁷⁴ In its fourth report, circulated in January 1998, the Commission outlined additional responses received from the various Governments it had contacted,⁷⁵ as well as a limited number of conclusions.⁷⁶ In those conclusions, the Commission suggested action it would take in future if it were to be maintained by the Security Council.

12.4.4 States

In addition to the steps States were obligated to take under the Rwanda sanctions régime,⁷⁷ States were also requested by the Security Council to take certain additional extra measures to improve the régime's implementation, monitoring and enforcement. When the sanctions régime was established, the Council called upon all States to act in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.⁷⁸ In April 1995, the Council called upon all States, and especially those neighbouring Rwanda, to refrain from any action that would further exacerbate the security situation in that country, and it invited States with information on the transport of arms into countries neighbouring Rwanda for the purpose of their use in Rwanda in contravention of the sanctions, to pass that information on to the 918 Committee.⁷⁹ In June 1995, the Council called upon States neighbouring Rwanda to take steps to ensure that arms and *matériel* were not transferred to Rwandan camps within their territories.⁸⁰

⁷⁴ *Ibid*, paragraph 118.

⁷⁵ *Fourth report of the ICIR*, above note 47, paragraphs 1-38.

⁷⁶ *Ibid*, paragraphs 39-43.

⁷⁷ The obligations upon States under the sanctions régime are outlined in section 12.3, above.

⁷⁸ S/RES/918 (17 May 1994), operative paragraph 15.

⁷⁹ S/PRST/1995/22 (27 April 1995): *Presidential statement of 27 April 1995*.

⁸⁰ S/RES/997 (9 June 1995), operative paragraph 5.

In August 1995, the Council called upon the Governments of Rwanda and neighbouring States to cooperate with the investigations of the commission that was soon to be established,⁸¹ and called upon neighbouring States to cooperate and assist with observers to be deployed at airfields and border crossing points to ensure that arms and related *matériel* were not transferred to Rwandan camps within their territories.⁸² At the same time the Council required States to notify the 918 Committee of all exports of arms and related *matériel* being made to Rwanda, in accordance with the exemption from the sanctions régime of arms and related *matériel* exported to the Government of Rwanda through named points of entry, and it required the Government of Rwanda to mark and register and notify the Committee of all imports made by it.⁸³

In September 1995, when the Council established the International Commission of Inquiry into the Rwanda arms embargo, the Council called upon States to make available to the Commission any information in their possession relating to the Commission's mandate,⁸⁴ and to cooperate fully with the Commission.⁸⁵ The Council also encouraged States to make contributions to the Trust Fund for Rwanda, to supplement the financing for the work of the Commission, and to contribute equipment and services to the Commission.⁸⁶

In April 1996, after receiving the interim report and actual report by the International Commission of Inquiry, the Security Council requested States to take certain action to

⁸¹ S/RES/1011 (16 August 1995), operative paragraph 3.

⁸² S/RES/1011 (16 August 1995), operative paragraph 4.

⁸³ S/RES/1011 (16 August 1995), operative paragraph 11.

⁸⁴ S/RES/1013 (7 September 1995), operative paragraph 3.

⁸⁵ S/RES/1013 (7 September 1995), operative paragraph 5 [containing a detailed list of suggested action that States might take to cooperate with the Commission], operative paragraph 7; S/RES/1029 (12 December 1995), operative paragraph 12.

⁸⁶ S/RES/1013 (7 September 1995), operative paragraph 8; S/RES/1053 (23 April 1996), operative paragraph 11.

address the Commission's findings. Thus, the Council: (a) Called upon States in the Great Lakes region to ensure that their territory was not used as a base from which armed groups might launch attacks against any other State;⁸⁷ (b) Urged all States, and in particular those in the region, to intensify efforts to prevent military training and the sale or supply of weapons to militia groups or former Rwandan government forces, and to take the steps necessary to ensure the effective implementation of the arms embargo, including by creating all necessary national mechanisms for implementation;⁸⁸ (c) Called upon those States that had not yet done so to cooperate fully with the Commission and to investigate fully reports of their officials and nationals suspected of having violated the sanctions;⁸⁹ (d) States, and in particular those whose nationals had been implicated by the Commission's report, to investigate the apparent complicity of their officials or private citizens in the purchase of arms from Seychelles, in June 1994, and in other suspected violations of the relevant Council resolutions;⁹⁰ and (e) Called upon States to make available to the Commission the results of their investigations, and to cooperate fully with the Commission, including by providing it access to airfields and witnesses, in private and without the presence of officials or representatives of the Government.⁹¹

In April 1998, after receiving the International Commission of Inquiry's third report and the addendum thereto, the Security Council again called upon all States to make available to the Commission any information in their possession relating to the Commission's

⁸⁷ S/RES/1053 (23 April 1996), operative paragraph 4.

⁸⁸ S/RES/1053 (23 April 1996), operative paragraph 5.

⁸⁹ S/RES/1053 (23 April 1996), operative paragraph 8.

⁹⁰ S/RES/1053 (23 April 1996), operative paragraph 9.

⁹¹ S/RES/1053 (23 April 1996), operative paragraph 10.

mandate,⁹² and to cooperate fully with the Commission.⁹³ At the same time, the Council also called upon all States in the Great Lakes region to ensure that their territory was not used as a base for armed groups to launch incursions into or attacks against any other State.⁹⁴

12.5 The suspension of aspects of the Rwanda sanctions régime

As noted above, in August 1995 the scope of the Rwanda sanctions régime was narrowed such that the embargo no longer applied to the sale or supply of arms and related *matériel* to the Rwandan Government, through designated entry points. On September 1 1996, the requirement that such imports proceed to the Government via designated points lapsed, such that the general sale or supply of arms and related *matériel* to the Rwandan Government was permissible.⁹⁵

12.6 Notable aspects of the Rwanda sanctions régime

The Rwanda sanctions régime is noteworthy largely as a mixture of neglect and creative experimentation. The neglect is apparent in the fact that the Rwanda Sanctions Committee has met for a total of seven formal meetings in nine years, with its last meeting taking place over five years ago. The creative experimentation is demonstrated by the explicit statement on the part of the Council that the arms embargo required States to prevent the sale or supply of arms to persons in States neighbouring Rwanda if destined for use in Rwanda itself, and in particular by the establishment of the International Commission

⁹² S/RES/1161 (9 April 1998), operative paragraph 2.

⁹³ S/RES/1161 (9 April 1998), operative paragraph 3.

⁹⁴ S/RES/1161 (9 April 1998), operative paragraph 4.

⁹⁵ As noted above, this development was foreshadowed in resolution 1011 (1995), operative paragraph 8. It was confirmed by the then Chairman of the 918 Committee in a statement to the press on 11 September 1996: SC/6265 (Press Release): "Arms restrictions imposed on Rwanda Government ended, measures remain against non-governmental forces".

of Inquiry to explore violations of the arms embargo and to recommend measures to improve the embargo's implementation. The Commission represented the earliest attempt on the part of the Council to mandate an independent body of experts to explore the question of improving a sanctions régime. Unfortunately, however, despite the Commission's detailed reports, the Council did little to act upon its recommendations and suggestions.

13. The sanctions régime against the Sudan

The Security Council imposed sanctions against Sudan in March 1996, in an attempt to induce the extradition of three people wanted in connection with the assassination attempt that had been made against President Mubarak, of Egypt, in Addis Ababa, Ethiopia, on 26 June 1995. The sanctions régime initially consisted of diplomatic sanctions and targeted travel sanctions. The sanctions were strengthened slightly in August 1996, when the Council also imposed aviation sanctions against Sudan. The Sudan sanctions régime was eventually terminated in September 2001, when the Council determined that Sudan had taken steps to comply with its obligations under the sanctions régime.

13.1 The constitutional basis for imposing sanctions against the Sudan

In January 1996, the Security Council condemned the “terrorist assassination attempt” that had been made against President Mubarak, of Egypt, in Addis Ababa, Ethiopia, on 26 June 1995.¹ It then called upon the Government of Sudan to extradite the three suspects, who were sheltering in Sudan, to Ethiopia and to refrain from assisting, supporting or facilitating terrorist activities and from giving shelter or sanctuary to “terrorist elements”.² In March 1996, after the Secretary-General had reported that Sudan had failed

¹ S/RES/1044 (31 January 1996), operative paragraph 1. For a detailed account of the assassination attempt and of the Ethiopian Government’s efforts to achieve the extradition of the three suspects from Sudan, see: S/1996/10 (9 January 1996): *Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council*, annex III: *Submission by Ethiopia to the United Nations Security Council on the assassination attempt on President Hosni Mubarak on 26 June 1995 in Addis Ababa, Ethiopia*.

² S/RES/1044 (31 January 1996), operative paragraph 4.

to comply with the Security Council's requests,³ the Council reaffirmed that the suppression of acts of international terrorism, including those in which States were involved, was essential for the maintenance of international peace and security.⁴ The Council then determined that the Government of Sudan's non-compliance with its requests to extradite the three suspects to Ethiopia and to refrain from assisting, supporting or facilitating terrorist activities, and from giving shelter or sanctuary to terrorists, constituted a threat to international peace and security,⁵ and noted that it was acting under Chapter VII of the Charter of the United Nations,⁶ before imposing sanctions against Sudan.⁷ In subsequent decisions related to the Sudan sanctions régime, the Council again reaffirmed that the suppression of acts of international terrorism was essential for the maintenance of international peace and security,⁸ determined that the non-compliance of the Government of Sudan constituted a threat to international peace and security,⁹ and invoked Chapter VII of the Charter.¹⁰

13.2 The objectives of the Sudan sanctions régime

The major objective of the Sudan sanctions régime was to induce the extradition by Sudan of the three suspects wanted for the assassination attempt against President Mubarak.¹¹ A secondary objective was to ensure that Sudan desisted from assisting,

³ See: S/1996/179 (11 March 1996): *Report of the Secretary-General pursuant to Security Council resolution 1044 (1996)*, paragraph 31.

⁴ S/RES/1054 (26 April 1996), preambular paragraph 9.

⁵ S/RES/1054 (26 April 1996), preambular paragraph 10.

⁶ S/RES/1054 (26 April 1996), preambular paragraph 11.

⁷ S/RES/1054 (26 April 1996), operative paragraphs 3, 4.

⁸ S/RES/1070 (16 August 1996), preambular paragraph 10.

⁹ S/RES/1070 (16 August 1996), preambular paragraph 11.

¹⁰ S/RES/1070 (16 August 1996), preambular paragraph 12; S/RES/1372 (28 September 2001), preambular paragraph 7.

¹¹ S/RES/1054 (26 April 1996), operative paragraph 1(a).

supporting and facilitating terrorist activities and from giving shelter or sanctuary to terrorist elements.¹²

13.3 The scope of the Sudan sanctions régime

The Sudan sanctions régime initially consisted of a blend of mandatory diplomatic and travel sanctions.¹³ Under the diplomatic sanctions, States were required to reduce the number and level of staff at Sudanese diplomatic missions and consular posts, and to restrict or control the movement within their territory of all such staff who were to remain.¹⁴ The travel sanctions obligated States to restrict the entry into or transit through their territory of members of the Government of Sudan, officials of that Government, and members of the Sudanese armed forces.¹⁵

In August 1996, with the Government of Sudan yet to comply with the Security Council's demands, the Council imposed aviation sanctions. Under the additional sanctions, States were required to deny aircraft permission to take off from, land in or overfly their territories where those aircraft were owned by Sudan Airways or the Sudanese Government, or by an undertaking that was owned or controlled by Sudan Airways or the Sudanese Government.¹⁶

¹² S/RES/1054 (26 April 1996), operative paragraph 1(b).

¹³ S/RES/1054 (26 April 1996), operative paragraph 3. At the same time, the Council also outlined a form of voluntary, targeted economic sanctions, by calling upon international and regional organizations not to convene conferences in Sudan: S/RES/1054 (26 April 1996), operative paragraph 4. Those measures were qualitatively different from the other measures imposed, however, because they were directed at international organizations and regional organizations rather than at States, and because they were articulated in the form of a call rather than a decision (i.e. "calls upon" rather than "decides").

¹⁴ S/RES/1054 (26 April 1996), operative paragraph 3(a).

¹⁵ S/RES/1054 (26 April 1996), operative paragraph 3(b).

¹⁶ S/RES/1070 (16 August 1996), operative paragraph 3.

13.4 The administration, monitoring and enforcement of the Sudan sanctions régime

The Security Council broke with its general sanctions practice in the case of the Sudan sanctions régime, by not establishing a Sanctions Committee to oversee the administration and implementation of the sanctions.¹⁷ Instead of calling upon a Sanctions Committee to undertake responsibilities for the administration and implementation of the Sudan sanctions régime, the Council requested the Secretary-General and States to perform various tasks related to the administration and implementation of sanctions.

13.4.1 Secretary-General

Prior to the application of the Sudan sanctions régime, the Council requested the Secretary-General, in consultation with the Organization of African Unity, to seek the cooperation of the Government of Sudan with the requests to extradite the three suspects alleged to have been involved in the assassination attempt against President Mubarak and to refrain from supporting terrorist activities.¹⁸ The Council also requested that the Secretary-General report to it on those efforts within sixty days.¹⁹ When the Security Council established the Sudan sanctions régime, it requested the Secretary-General to report to it on information received from States on steps taken to implement the sanctions.²⁰ The Secretary-General was also requested to report on whether the Government of Sudan had complied with the Council's demands to extradite the three suspects and to desist from assisting, supporting and facilitating terrorist activities and from giving shelter to terrorist

¹⁷ The Sudan sanctions régime remains the only régime for which administrative responsibility has not been bestowed upon a Sanctions Committee.

¹⁸ S/RES/1044 (31 January 1996), operative paragraph 7.

¹⁹ S/RES/1044 (31 January 1996), operative paragraph 7.

²⁰ S/RES/1054 (26 April 1996), operative paragraph 7.

elements.²¹ In August 1996, when the Council strengthened the Sudan sanctions régime, it requested the Secretary-General to report to it if Sudan had complied with the objectives of the sanctions régime prior to the date on which the additional sanctions were to come into effect, in which case the sanctions might not enter into force.²² The Council also requested that the Secretary-General report to it within three months, on the compliance of the Government of Sudan with the Council's demands to extradite the three suspects and to desist from assisting, supporting and facilitating terrorist activities and from giving shelter to terrorist elements.²³

In July 1996, the Secretary-General reported that the Government of Sudan claimed that its investigations had produced no trace of two of the alleged suspects and that the identity of the third suspect was unknown.²⁴ He also reported that Sudan asserted that it condemned terrorism and did not condone terrorist activities.²⁵ In the same report, the Secretary-General also listed the forty replies that he had received from Member States outlining steps taken to implement the sanctions against Sudan.²⁶

13.4.2 States

When the Council established the Sudan sanctions régime, it called upon all States, including States not members of the United Nations, to act strictly in conformity with the

²¹ S/RES/1054 (26 April 1996), operative paragraph 8. The Council States requested to submit such reports in: S/RES/1054 (26 April 1996), operative paragraph 6.

²² S/RES/1070 (16 August 1996), operative paragraph 4.

²³ S/RES/1070 (16 August 1996), operative paragraph 5.

²⁴ S/1996/541 (10 July 1996): *Report of the Secretary-General pursuant to Security Council resolution 1054 (1996)*, paragraph 10(a).

²⁵ *Ibid*, paragraph 10(b).

²⁶ *Ibid*, annex.

sanctions, notwithstanding the existence of any conflicting legal rights or obligations.²⁷ At the same time, the Council also requested States to report to the Secretary-General on steps taken to implement the sanctions.²⁸

13.4.3 International organizations, regional organizations and specialized agencies

When the Council established the Sudan sanctions régime, it also called upon all international and regional organizations not to convene any conference in the Sudan,²⁹ and called upon the specialized agencies to act strictly in conformity with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.³⁰

13.5 Termination of the Sudan sanctions régime

In September 2001, the Security Council noted the steps that had been taken by the Government of the Sudan to comply with the Council's demands under the sanctions régime,³¹ as well as a collection of correspondence it had received advocating the lifting of the sanctions against Sudan.³² The Council then welcomed the accession of Sudan to various international conventions for the suppression of terrorism,³³ and decided to terminate the sanctions.³⁴

²⁷ S/RES/1054 (26 April 1996), operative paragraph 5.

²⁸ S/RES/1054 (26 April 1996), operative paragraph 6; S/RES/1070 (16 August 1996), operative paragraph 2.

²⁹ S/RES/1054 (26 April 1996), operative paragraph 4.

³⁰ S/RES/1054 (26 April 1996), operative paragraph 5.

³¹ S/RES/1372 (28 September 2001), preambular paragraph 2.

³² S/RES/1372 (28 September 2001), preambular paragraphs 3-5.

³³ S/RES/1372 (28 September 2001), preambular paragraph 6.

³⁴ S/RES/1372 (28 September 2001), operative paragraph 1.

13.6 Notable aspects of the Sudan sanctions régime

As noted above, the most unusual aspect of the Sudan sanctions régime was that the Council did not establish a Sanctions Committee to oversee the administration of the sanctions. As with the sanctions régime against Libya, the main impetus for the application of the sanctions was to gain custody of suspects alleged to have perpetrated acts of international terrorism, with the Council stating on a number of occasions that the suppression of international terrorism was essential for the maintenance of international peace and security.³⁵ Another notable aspect was the Council's employment of time-delays when imposing sanctions. The initial sanctions, outlined in resolution 1054 (1996), did not enter into force until 10 May 1996 – two weeks after the adoption of the resolution.³⁶ The additional sanctions, outlined in resolution 1070 (1996), did not enter into force until more than ninety days after the adoption of resolution 1070 (1996).³⁷

³⁵ See, e.g.: S/RES/1044 (31 January 1996), preambular paragraph 5; S/RES/1054 (26 April 1996), preambular paragraph 9; S/RES/1372 (28 September 2001), preambular paragraph 7.

³⁶ S/RES/1054 (26 April 1996), operative paragraph 2.

³⁷ S/RES/1070 (16 August 1996), operative paragraph 4.

14. The Sierra Leone sanctions régime

The Security Council imposed sanctions against Sierra Leone in October 1997, in order to induce the military junta, which had come to power the previous May by means of a *coup d'état*, to return control of the country to Sierra Leone's democratically-elected Government. The sanctions régime consisted of targeted travel sanctions, petroleum sanctions, and an arms embargo. In June 1998, after the democratically-elected Government had been returned to power, the initial sanctions were terminated. They were replaced immediately, however, by new sanctions targeting the former military junta and the leaders of the major rebel group in Sierra Leone – the Revolutionary United Front (RUF). Those sanctions consisted of an arms embargo, targeted travel sanctions and diamond sanctions. In June 2003, the diamond sanctions expired, meaning that the sanctions régime currently consists of an arms embargo and targeted travel sanctions.

14.1 The constitutional basis for imposing sanctions against Sierra Leone

In October 1997, the Security Council recalled its earlier statements condemning the military coup that had taken place in Sierra Leone on 25 May 1996,¹ and deplored the fact that the military junta had not taken steps to allow the restoration of the democratically-elected Government and a return to constitutional order.² The Council then expressed its grave concern at the continued violence and loss of life in Sierra Leone following the military coup, at the deteriorating humanitarian conditions in that country, and at the consequences

¹ S/RES/1132 (8 October 1997), preambular paragraph 1. Those statements had taken the form of three presidential statements: S/PRST/29 (27 May 1996): *Presidential statement of 27 May 1996*; S/PRST/36 (11 July 1996): *Presidential statement of 11 July 1996*; and S/PRST/42 (6 August 1997): *Presidential statement of 6 August 1997*.

for neighbouring countries.³ The Council then determined that the situation in Sierra Leone constituted a threat to international peace and security in the region,⁴ and invoked Chapter VII of the Charter of the United Nations before imposing sanctions.⁵ In subsequent decisions related to the Sierra Leone sanctions régime, the Council has again determined that the situation in Sierra Leone continued to constitute a threat to international peace and security,⁶ and it has again invoked Chapter VII of the Charter.⁷

14.2 The objective of the Sierra Leone sanctions régime

The objective of the initial sanctions was for the military junta to take immediate steps to relinquish power in Sierra Leone and to make way for the restoration of the democratically-elected Government and a return to constitutional order.⁸ The objectives of the sanctions targeting the former military junta and the RUF were the re-establishment of Government control throughout the territory of Sierra Leone and the disarmament and demobilization of all non-governmental forces.⁹ In its decisions imposing and extending the diamond sanctions, the Council noted that a key factor in determining whether to extend the diamond sanctions would be the extent of the Government's authority over the diamond-

² S/RES/1132 (8 October 1997), preambular paragraph 7.

³ S/RES/1132 (8 October 1997), preambular paragraph 8.

⁴ S/RES/1132 (8 October 1997), preambular paragraph 9.

⁵ S/RES/1132 (8 October 1997), preambular paragraph 10.

⁶ S/RES/1306 (5 July 2000), preambular paragraph 4; S/RES/1385 (19 December 2001), preambular paragraph 9 [determining that the situation in Sierra Leone continued to constitute a threat to international peace and security in the region]; S/RES/1446 (4 December 2002), preambular paragraph 9 [determining that the situation in Sierra Leone continued to constitute a threat to international peace and security in the region].

⁷ S/RES/1156 (16 March 1998), preambular paragraph 3; S/RES/1171 (5 June 1998), preambular paragraph 4; S/RES/1306 (5 July 2000), preambular paragraph 5; S/RES/1385 (19 December 2001), preambular paragraph 10; S/RES/1446 (4 December 2002), preambular paragraph 10.

⁸ S/RES/1132 (8 October 1997), operative paragraphs 1, 19.

⁹ S/RES/1171 (5 June 1998), operative paragraph 7.

producing areas.¹⁰ In its decisions extending the diamond sanctions, the Council also noted, however, that those measures would be terminated immediately if it were to determine that such a step was appropriate.¹¹

14.3 The scope of the Sierra Leone sanctions régime

The sanctions régime initially consisted of targeted travel sanctions, sanctions against petroleum and an arms embargo. The travel sanctions required States to prevent the entry into or transit through their territories of the military junta and adult members of their families, unless it was for verified humanitarian purposes or in order to facilitate the return of the democratically-elected Government.¹² The petroleum sanctions required States to prevent the sale or supply to Sierra Leone of petroleum and petroleum products.¹³ The arms embargo required States to prevent the sale or supply to Sierra Leone of arms and related *matériel* of all types.¹⁴

In March 1998, upon the return to Sierra Leone of its democratically-elected President, the Council terminated the petroleum sanctions.¹⁵ In June 1998, the Council welcomed the efforts of the Government of Sierra Leone to re-establish effective

¹⁰ S/RES/1306 (5 July 2000), operative paragraph 6; S/RES/1385 (19 December 2001), operative paragraph 3; S/RES/1446 (4 December 2002), operative paragraph 2.

¹¹ S/RES/1385 (19 December 2001), operative paragraph 4; S/RES/1446 (4 December 2002), operative paragraph 3.

¹² S/RES/1132 (8 October 1997), operative paragraph 5.

¹³ S/RES/1132 (8 October 1997), operative paragraph 6. The Council did provide for exemptions from the petroleum sanctions, however, enabling the Sierra Leone Sanctions Committee to authorize, on a case-by-case basis under a no-objection procedure, applications for exemptions from: the democratically-elected Government of Sierra Leone; other governments or United Nations agencies, where such applications were for verified humanitarian purposes; and for the needs of ECOMOG. See: S/RES/1132 (8 October 1997), operative paragraph 7. For details relating to the establishment of the Sierra Leone Sanctions Committee, see below.

¹⁴ S/RES/1132 (8 October 1997), operative paragraph 6.

¹⁵ S/RES/1156 (16 March 1998), operative paragraph 2.

administration and the democratic process,¹⁶ and terminated the remaining sanctions imposed by resolution 1132 (1997) – the targeted travel sanctions and the arms embargo.¹⁷ In the same resolution, however, the Security Council imposed a new set of sanctions, consisting of an arms embargo and targeted travel sanctions, that aimed to stifle the ability of rebel groups in Sierra Leone to engage in armed conflict against the Government. The arms sanctions required States to prevent the supply of arms to Sierra Leone, apart from to the Government through named points of entry or for the use of the Military Observer Group of the Economic Community of West African States (ECOMOG).¹⁸ The targeted travel sanctions required States to prevent the entry into or transit through their territories of leading members of the former military junta and of the Revolutionary United Front (RUF).¹⁹ In May 2000, the Council outlined an additional exemption from the arms embargo against Sierra Leone, providing that the embargo would not apply to the sale or supply of arms and related *matériel* for the use in Sierra Leone of Member States cooperating with the United Nation Assistance Mission in Sierra Leone (UNAMSIL) and with the Government of Sierra Leone.²⁰

In July 2000, the Security Council strengthened the sanctions against the rebel groups, imposing “diamond sanctions”. The new measures required States to prevent the import to their territories, for a period of eighteen months, of rough diamonds originating

¹⁶ S/RES/1171 (5 June 1998), preambular paragraph 2.

¹⁷ S/RES/1171 (5 June 1998), operative paragraph 1.

¹⁸ S/RES/1171 (5 June 1998), operative paragraphs 2, 3. For further details on the role of ECOMOG, see the next section.

¹⁹ S/RES/1171 (5 June 1998), operative paragraph 5. For the list of those banned from travel, see: http://www.un.org/Docs/sc/committees/SierraLeone/1132_list.htm [last visited on 17 July 2003].

²⁰ S/RES/1299 (19 May 2000), operative paragraph 3.

from Sierra Leone.²¹ Exempt from the sanctions, however, would be rough diamonds certified by the Government through a Certificate of Origin régime.²² The Security Council extended the diamond sanctions on two occasions, for periods of eleven and six months.²³ In June 2003, when the most recent period of extension expired, the members of the Council agreed not to renew the diamond sanctions, in light of the Government of Sierra Leone's increased efforts to manage its diamond industry and ensure proper control over diamond areas, and in light of its full participation in the Kimberley Process.²⁴

14.4 The administration, monitoring and enforcement of the Sierra Leone sanctions régime

During the course of the Sierra Leone sanctions régime, the Security Council has created two subsidiary entities to facilitate the implementation of the Sierra Leone sanctions régime: the Sierra Leone Sanctions Committee and a Panel of Experts. The Council has also called upon a range of international actors to play a role in the implementation of the sanctions, including the Secretary-General, the Economic Community of West African States (ECOWAS), and States in general.

²¹ S/RES/1306 (5 July 2000), operative paragraphs 1, 5, 6.

²² S/RES/1306 (5 July 2000), operative paragraph 5. When resolution 1306 (2000) was adopted, there was no Certification of Origin régime. The Council therefore requested the Government of Sierra Leone to establish such a régime: *ibid*, operative paragraph 2. The Committee decided, at its 21st meeting on 21 March 2001, that the new Certificate of Origin régime for the trade in Sierra Leone diamonds was in effective operation: see S/2000/966 (6 October 2000): *Letter dated 6 October 2000 from the Chairman of the 1132 Committee to the President of the Security Council*; S/2001/300 (30 March 2001): *Letter dated 28 March 2001 from the Chairman of the 1132 Committee to the President of the Security Council*. See also: Report of the 1132 Committee for 2001, below note 54, paragraph 11.

²³ S/RES/1385 (19 December 2001), operative paragraph 3; S/RES/1446 (4 December 2002), operative paragraph 2.

²⁴ SC/7778 (5 June 2003): *Press statement on the Sierra Leone Diamond Embargo by the President of the Security Council*.

14.4.1 The Sierra Leone Sanctions Committee

The Security Council established a Committee to oversee the administration of the sanctions régime in the same resolution that initially imposed the sanctions.²⁵ The new Committee (“the Sierra Leone Sanctions Committee” or the “1132 Committee”), was required to report to the Council with observations and recommendations and to undertake the following initial tasks: (a) To seek from all States further information regarding action taken to implement the sanctions;²⁶ (b) To consider information on violations of the sanctions and to recommend appropriate measures in response to those violations;²⁷ (c) To make periodic reports to the Security Council on information regarding alleged violations of the sanctions, identifying where possible the actors reported to be engaged in such violations;²⁸ (d) To promulgate guidelines to facilitate the implementation of the sanctions;²⁹ (e) To consider requests for exemptions from the petroleum sanctions;³⁰ (f) To designate members of the military junta and adult members of their families, against whom the travel sanctions were to be applied;³¹ (g) To examine reports from ECOWAS regarding action taken to ensure the strict implementation of the arms and petroleum sanctions,³² as well as reports

²⁵ S/RES/1132 (8 October 1997), operative paragraph 10.

²⁶ S/RES/1132 (8 October 1997), operative paragraph 10(a).

²⁷ S/RES/1132 (8 October 1997), operative paragraph 10(b).

²⁸ S/RES/1132 (8 October 1997), operative paragraph 10(c).

²⁹ S/RES/1132 (8 October 1997), operative paragraph 10(d). The guidelines were adopted by the Committee at its 2nd meeting, on 31 October 1997: SC/6435 (31 October 1997): Press release.

³⁰ S/RES/1132 (8 October 1997), operative paragraph 10(e). This exemption was outlined in operative paragraph 7 of resolution 1132 (1997), which also articulates the Committee’s responsibility in this regard.

³¹ S/RES/1132 (8 October 1997), operative paragraph 10(f). For the lists compiled by the Committee, see: SC/6472 (28 January 1998): *Press release of the Chairperson of the 1132 Committee*.

³² S/RES/1132 (8 October 1997), operative paragraph 9.

submitted by States on steps taken to give effect to the sanctions;³³ and (h) To liaise with the ECOWAS Committee on the implementation of the sanctions.³⁴

In June 1998, when the Security Council terminated the initial sanctions and reimposed the arms and travel sanctions targeting the former military junta leaders and the leaders of the RUF, it realigned the responsibilities of the 1132 Committee. The Committee's tasks now included the following: (a) To report to the Security Council on the notifications received from the Government of Sierra Leone and from States relating to the registration of legitimate arms imports to Sierra Leone;³⁵ (b) To seek from all States further information regarding action taken to implement the new sanctions;³⁶ (c) To consider information concerning violations of the new sanctions and to recommend appropriate measures in response to those violations;³⁷ (d) To make periodic reports to the Security Council on information regarding alleged violations of the new sanctions, identifying where possible the actors reported to be engaged in such violations;³⁸ (e) To promulgate guidelines to facilitate the implementation of the new sanctions;³⁹ (f) To designate members of the military junta and leaders of the RUF and adult members of their families, against whom the new travel sanctions were to be applied;⁴⁰ and (g) To liaise with the ECOWAS Committee

³³ S/RES/1132 (8 October 1997), operative paragraph 10(g). States were requested to submit such reports by operative paragraph 13 of resolution 1132 (1997).

³⁴ S/RES/1132 (8 October 1997), operative paragraph 10(h).

³⁵ S/RES/1171 (5 June 1998), operative paragraph 4. The Committee thus submitted the following reports: S/1998/740 (7 August 1998); S/1998/1170 (15 December 1998).

³⁶ S/RES/1171 (5 June 1998), operative paragraph 6.

³⁷ S/RES/1171 (5 June 1998), operative paragraph 6.

³⁸ S/RES/1171 (5 June 1998), operative paragraph 6.

³⁹ S/RES/1171 (5 June 1998), operative paragraph 6. The Committee adopted consolidated guidelines on 18 June 1998: SC/6532 (18 June 1998): *Press release*.

⁴⁰ S/RES/1171 (5 June 1998), operative paragraph 6.

on the implementation of the new sanctions.⁴¹ In January 1999, the Council expressed grave concern at reports that military support was being provided to rebels in Sierra Leone from the territory of Liberia, and it urged the Sierra Leone Sanctions Committee to investigate violations of the arms embargo and to report to it with recommendations.⁴²

In July 2000, when the Council imposed diamond sanctions targeted against the rebel groups, it created the following further tasks: (a) To communicate with the Sierra Leone Government regarding the establishment of a certificate-of-origin régime for trading diamonds and to report to the Council when an effective régime is in operation;⁴³ (b) To seek from all States further information regarding action taken to implement the diamond sanctions;⁴⁴ (c) To consider information concerning violations of the diamond sanctions, identifying where possible those involved in such violations;⁴⁵ (d) To make periodic reports to the Security Council on alleged violations of the diamond sanctions, identifying where possible those involved in such violations;⁴⁶ (e) To promulgate guidelines to facilitate the implementation of the diamond sanctions;⁴⁷ (f) To continue its cooperation with other

⁴¹ S/RES/1171 (5 June 1998), operative paragraph 6.

⁴² S/PRST/1999/1 (7 January 1999): *Presidential statement of 7 January 1999*.

⁴³ S/RES/1306 (5 July 2000), operative paragraphs 4, 5. The Committee decided, at its 21st meeting on 21 March 2001, that the new Certificate of Origin régime for the trade in Sierra Leone diamonds was in effective operation: see S/2000/966 (6 October 2000); S/2001/300 (30 March 2001). See also: Report of the 1132 Committee for 2001, below note 54, paragraph 11. The Government of Sierra Leone submitted a number of reviews on the effectiveness of the Certificate of Origin régime: see: S/2001/127 (12 February 2001), annex [containing a 90-day review by the Sierra Leone Government of the Certificate of Origin régime]; S/2001/794 (13 August 2001), annex [containing the second 90-day review by the Sierra Leone Government of the Certificate of Origin régime]; S/2002/38 (9 January 2002), annex [containing the third 90-day review by the Sierra Leone Government of the Certificate of Origin régime]; S/2002/826 (23 July 2002), annex [containing the fourth 90-day review by the Sierra Leone Government of the Certificate of Origin régime].

⁴⁴ S/RES/1306 (5 July 2000), operative paragraph 7(a).

⁴⁵ S/RES/1306 (5 July 2000), operative paragraph 7(b).

⁴⁶ S/RES/1306 (5 July 2000), operative paragraph 7(c).

⁴⁷ S/RES/1306 (5 July 2000), operative paragraph 7(d).

relevant sanctions committees, and in particular with the 985/Liberia Sanctions Committee and the 864/UNITA Sanctions Committee;⁴⁸ (g) To hold an exploratory hearing in New York, no later than 31 July 2000, to assess the role of diamonds in the Sierra Leone conflict and the link between trade in Sierra Leone diamonds and trade in arms and related *materiel* in violation of the Sierra Leone sanctions, involving representatives of interested States and regional organizations, the diamond industry and other relevant experts, and to report to the Council on the hearing;⁴⁹ (h) To receive reports from States on measures taken to implement the arms and travel sanctions;⁵⁰ (i) To strengthen contacts with regional organizations, in particular ECOWAS and the Organization of African Unity, and relevant international organizations, including INTERPOL, with a view to identifying ways to improve effective implementation of the arms and travel sanctions;⁵¹ and (j) To make relevant information publicly available through appropriate media, including through the improved use of information technology.⁵² In December 2002, when the Council extended the application of the diamond sanctions, it decided that the Committee should continue its consideration of the arms and travel sanctions and present its views to the Council.⁵³

Since its establishment, the 1132 Committee has issued five annual reports.⁵⁴ It has also issued a number of other reports pursuant to its various responsibilities under the

⁴⁸ S/RES/1306 (5 July 2000), operative paragraph 7(e).

⁴⁹ S/RES/1306 (5 July 2000), operative paragraph 12. As noted below, the Committee ultimately circulated the following report on the hearing: S/2000/1150 (4 December 2000), annex: *Summary report on the exploratory hearing on Sierra Leone diamonds (31 July and 1 August 2000)*.

⁵⁰ S/RES/1306 (5 July 2000), operative paragraph 17.

⁵¹ S/RES/1306 (5 July 2000), operative paragraph 22.

⁵² S/RES/1306 (5 July 2000), operative paragraph 23.

⁵³ S/RES/1446 (4 December 2002), operative paragraph 4.

⁵⁴ S/1998/1236 (31 December 1998), annex: *Report of the Security Council Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone* [hereafter "*First Report of the 1132 Committee*"], containing a summary of the Committee's activities from its establishment in

sanctions régime, including on: measures taken by States to implement the original travel sanctions and arms and petroleum embargoes;⁵⁵ measures taken by States to implement the subsequent arms embargo and notifications by the Government of Sierra Leone of imports of arms and related *matériel*;⁵⁶ the exploratory hearing on the role of diamonds in the Sierra Leone conflict;⁵⁷ measures taken by States to implement the diamond sanctions;⁵⁸ and measures taken by States to enforce, strengthen or enact legislation making it a criminal offence to act in violation of the sanctions.⁵⁹

In its annual reports, the 1132 Committee has summarised the activities undertaken during the most recent reporting period,⁶⁰ noted alleged violations brought to its attention,⁶¹ and outlined its observations.⁶² The annual reports illustrate the manner in which the 1132

October 1997 and the end of 1998]; S/1999/1300 (31 December 1999), annex: *Report of the 1132 Committee for 1999*; S/2000/1238 (26 December 2000), annex: *Report of the 1132 Committee for 2000*; S/2002/50 (14 January 2002), annex: *Report of the 1132 Committee for 2001*; S/2002/1414 (24 December 2002), annex: *Report of the 1132 Committee for 2002*.

⁵⁵ S/1998/112 & Add.1 (10 February and 31 March 1998), annexes.

⁵⁶ S/1998/740 (7 August 1998), annex; S/1998/1170 (15 December 1998), annex; S/1999/111 (3 February 1999), annex; S/1999/174 (16 February 1999), annex; S/1999/350 (26 March 1999), annex; S/1999/381 (5 April 1999), annex; S/1999/1013 (29 September 1999), annex; S/1999/1026 (5 October 1999), annex; S/2000/659 (7 July 2000), annex; S/2000/660 (21 July 2000), annex; S/2000/730 (26 July 2000), annex; S/2000/1127 (27 November 2000), annex; S/2001/105 (2 February 2001), annex; S/2001/126 (12 February 2001), annex; S/2001/261 (22 March 2001), annex; S/2001/492 (10 May 2001), annex; S/2001/493 (10 May 2001), annex; S/2001/664 (2 July 2001), annex; S/2001/718, annex.

⁵⁷ S/2000/1150 (4 December 2000), annex: *Summary report on the exploratory hearing on Sierra Leone diamonds (31 July and 1 August 2000)*.

⁵⁸ S/2000/862 & Add.1 (13 September and 4 December 2000); S/2001/771 (7 August 2001).

⁵⁹ S/2000/861 & Add.1 (13 September and 4 December 2000); S/2001/772 (8 August 2001).

⁶⁰ See: *First Report of the 1132 Committee*, above note 54, paragraphs 5-15, 19-21; *Report of the 1132 Committee for 1999*, above note 54, paragraphs 2-9; *Report of the 1132 Committee for 2000*, above note 54, paragraphs 8-19, 23-25; *Report of the 1132 Committee for 2001*, above note 54, paragraphs 8-25, 18-19; *Report of the 1132 Committee for 2002*, above note 54, paragraphs 8-15, 20-23.

⁶¹ See: *First Report of the 1132 Committee*, above note 54, paragraphs 16-18; *Report of the 1132 Committee for 1999*, above note 54, paragraphs 10-13; *Report of the 1132 Committee for 2000*, above note 54, paragraphs 20-22; *Report of the 1132 Committee for 2001*, above note 54, paragraphs 16-17; *Report of the 1132 Committee for 2002*, above note 54, paragraphs 16-19.

⁶² See: *First Report of the 1132 Committee*, above note 54, paragraphs 22-25; *Report of the 1132 Committee for 1999*, above note 54, paragraph 14; *Report of the 1132 Committee for 2000*,

Committee has engaged in some relatively innovative activities, including: visits to the region and other relevant locations undertaken by the Chairman of the Committee to explore avenues for facilitating the implementation of the sanctions;⁶³ the convening of the exploratory hearing on Sierra Leone diamonds;⁶⁴ and the holding of joint informal meetings with other Sanctions Committees, including the 1343/Liberia Committee and the 864/UNITA Committee.⁶⁵ In observations outlined in its first report, the Committee noted that non-governmental forces were continuing to launch armed attacks into Sierra Leone and that arms and ammunition were continuing to cross into Sierra Leone from neighbouring countries, including Liberia.⁶⁶ The Committee noted that it would continue to explore measures to improve the implementation of the arms embargo and the travel sanctions, including: (a) Providing support for national or joint monitoring of the border between Sierra Leone and Liberia;⁶⁷ (b) Identifying focal points within ECOMOG/ECOWAS, in order to facilitate closer liaison between the Committee and that regional organization;⁶⁸ (c) Frequent reporting from the United Nations Observer Mission in Sierra Leone (UNOMSIL) to the

above note 54, paragraphs 26-27; *Report of the 1132 Committee for 2001*, above note 54, paragraph 20; *Report of the 1132 Committee for 2002*, above note 54, paragraph 24.

⁶³ Visits were undertaken to the region by the then Chairman in December 1997 and December 1998: *First Report of the 1132 Committee*, above note 54, paragraphs 19-21. In June and July 2002, the then Chairman visited both the region and other relevant locations, such as Brussels, Vienna and Lyon. See: *Report of the 1132 Committee for 2002*, above note 54, paragraph 23.

⁶⁴ *Report of the 1132 Committee for 2000*, above note 54, paragraphs 13-14. See also: *Summary report on the exploratory hearing on Sierra Leone diamonds*, above note 57.

⁶⁵ *Report of the 1132 Committee for 2002*, above note 54, paragraph 20.

⁶⁶ *Ibid*, paragraphs 23-24.

⁶⁷ *Ibid*, paragraph 25(a).

⁶⁸ *Ibid*, paragraph 25(b).

Committee;⁶⁹ and (d) Continuing to distribute, including through the United Nations presence in the region, an updated list of individuals subject to the travel sanctions.⁷⁰

In its subsequent annual reports, the Committee's observations have been less extensive. In its report for 1999, the Committee observed that reports from ECOMOG and UNOMSIL could help to strengthen the effectiveness of the arms embargo.⁷¹ In its more recent reports, the Committee has simply noted that it does not have any specific monitoring mechanism to ensure the effective implementation of the sanctions, and it has therefore urged Member States and organizations to provide it with information pertinent to effective implementation.⁷² The Committee has also repeated that reports through ECOWAS and the United Nations Assistance Mission in Sierra Leone (UNAMSIL) could strengthen the effectiveness of the arms embargo.⁷³

14.4.2 The Secretary-General

In October 1997, when the Council established the sanctions régime against Sierra Leone, it requested the Secretary-General to provide all necessary assistance to the 1132 Committee,⁷⁴ and to report to it on measures taken by States to implement the sanctions.⁷⁵ At the same time, the Council also requested the Secretary-General to report, within fifteen

⁶⁹ *Ibid*, paragraph 25(c).

⁷⁰ *Ibid*, paragraph 25(d).

⁷¹ *Report of the 1132 Committee for 1999*, above note 54, paragraph 14.

⁷² *Report of the 1132 Committee for 2000*, above note 54, paragraph 26; *Report of the 1132 Committee for 2001*, above note 54, paragraph 20; *Report of the 1132 Committee for 2002*, above note 54, paragraph 24.

⁷³ *Report of the 1132 Committee for 2000*, above note 54, paragraph 27; *Report of the 1132 Committee for 2001*, above note 54, paragraph 20; *Report of the 1132 Committee for 2002*, above note 54, paragraph 24.

⁷⁴ S/RES/1132 (8 October 1997), operative paragraph 12.

⁷⁵ S/RES/1132 (8 October 1997), operative paragraph 13. The Secretary-General did so in the following reports: S/1998/112 & Add.1 (10 February and 31 March 1998).

days, on the compliance of the military junta with the requirements of the sanctions régime,⁷⁶ and then again by 8 December 1997 on the implementation of resolution 1132 (1997).⁷⁷

In June 1998, when the Security Council terminated the sanctions against Sierra Leone in general and reimposed them against the RUF and the former military junta, it requested the Secretary-General to receive from the Government of Sierra Leone the list of points of entry through which arms and related *matériel* would be permitted to enter Sierra Leone.⁷⁸ The Council also requested the Secretary-General to report to it within three months, and then again within six months, on the exports of arms and related *matériel* to Sierra Leone and on progress towards the re-establishment of Government control throughout Sierra Leone and the disarmament and demobilization of all non-government forces.⁷⁹

In July 2000, when the Council strengthened the sanctions régime by imposing diamond sanctions, it requested the Secretary-General to establish the Sierra Leone Panel of Experts and to provide the necessary resources to support the Panel's work.⁸⁰ At the same time, and on each occasion when the Council extended the diamond sanctions, the Council also requested the Secretary-General to publicize the provisions of the relevant resolution and the obligations it imposed.⁸¹

⁷⁶ S/RES/1132 (8 October 1997), operative paragraph 16.

⁷⁷ S/RES/1132 (8 October 1997), operative paragraph 16.

⁷⁸ S/RES/1171 (5 June 1998), operative paragraph 2.

⁷⁹ S/RES/1171 (5 June 1998), operative paragraph 8.

⁸⁰ S/RES/1306 (5 July 2000), operative paragraph 19. The Secretary-General notified the President of the Security Council that he had appointed five experts to serve on the Panel in August 2000: S/2000/756 (2 August 2000): *Letter dated 2 August 2000 from the Secretary-General addressed to the President of the Security Council*. For details relating to the mandate and activities of the Panel, see below.

⁸¹ S/RES/1306 (5 July 2000), operative paragraph 24; S/RES/1385 (19 December 2001), operative paragraph 5; S/RES/1446 (4 December 2002), operative paragraph 5.

14.4.3 States

When the Council established the Sierra Leone sanctions régime, it called upon all States to cooperate with ECOWAS to ensure the strict implementation of the sanctions.⁸² At the same time, the Council also called upon all States to act strictly in conformity with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations,⁸³ requested States to report to the Secretary-General on steps taken to give effect to the sanctions,⁸⁴ and urged all States to provide technical and logistical support to assist ECOWAS in carrying out its responsibilities in relation to the implementation of the sanctions.⁸⁵ In subsequent decisions, the Council has also: reminded States of their obligation to comply strictly with the sanctions;⁸⁶ required all States to notify the 1132 Committee of all exports from their territories to Sierra Leone of arms or related *matériel*,⁸⁷ and reaffirmed the obligation of all States to comply strictly with the arms sanctions against Sierra Leone;⁸⁸ reaffirmed the obligation of all States to bring all instances of violations of the arms sanctions before the 1132 Committee.⁸⁹

In July 2000, when the Council imposed diamond sanctions against Sierra Leone and strengthened the implementation of the arms sanctions against Sierra Leone, it requested States to undertake a range of tasks related to the implementation, monitoring and enforcement of sanctions. Among such tasks, the Council requested the Government of

⁸² S/RES/1132 (8 October 1997), operative paragraph 8.

⁸³ S/RES/1132 (8 October 1997), operative paragraph 11.

⁸⁴ S/RES/1132 (8 October 1997), operative paragraph 13.

⁸⁵ S/RES/1132 (8 October 1997), operative paragraph 18.

⁸⁶ S/PRST/1997/52 (14 November 1997): *Presidential statement of 14 November 1997*.

⁸⁷ S/RES/1171 (5 June 1998), operative paragraph 4.

⁸⁸ S/RES/1181 (13 July 1998), operative paragraph 13; S/PRST/1999/1 (7 January 1999): *Presidential statement of 7 January 1999*; S/RES/1231 (11 March 1999), operative paragraph 7; S/PRST/1999/13 (15 May 1999): *Presidential statement of 15 May 1999*.

Sierra Leone to ensure that an effective certificate-of-origin régime for trade in diamonds was in operation in Sierra Leone,⁹⁰ and to notify the 1132 Committee once the régime was fully in operation;⁹¹ requested States to offer assistance to the Government of Sierra Leone to facilitate the operation of a certificate-of-origin régime;⁹² requested all States to report to the 1132 Committee on actions taken to implement the diamond sanctions;⁹³ called upon all States to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations;⁹⁴ invited States to offer assistance to the Government of Sierra Leone to develop a well-structured and well-regulated diamond industry providing for the identification of the provenance of rough diamonds;⁹⁵ urged all States to report to the 1132 Committee on possible violations of the diamond sanctions;⁹⁶ called upon States to enforce, strengthen or enact legislation making it a criminal offence under domestic law for their nationals or other persons operating on their territory to act in violation of the arms sanctions against Sierra Leone, and to report to the 1132 Committee on the implementation of those sanctions;⁹⁷ urged all States to report to the 1132 Committee information on possible violations of the sanctions;⁹⁸ and urged all States to cooperate with the Sierra Leone Panel of Experts in the discharge of its mandate.⁹⁹

⁸⁹ S/RES/1181 (13 July 1998), operative paragraph 13.

⁹⁰ S/RES/1306 (5 July 2000), operative paragraph 2.

⁹¹ S/RES/1306 (5 July 2000), operative paragraph 4.

⁹² S/RES/1306 (5 July 2000), operative paragraph 3.

⁹³ S/RES/1306 (5 July 2000), operative paragraph 8.

⁹⁴ S/RES/1306 (5 July 2000), operative paragraph 9.

⁹⁵ S/RES/1306 (5 July 2000), operative paragraph 11.

⁹⁶ S/RES/1306 (5 July 2000), operative paragraph 16.

⁹⁷ S/RES/1306 (5 July 2000), operative paragraph 17.

⁹⁸ S/RES/1306 (5 July 2000), operative paragraph 18.

⁹⁹ S/RES/1306 (5 July 2000), operative paragraph 21.

14.4.4 Regional organizations

When the Council established the Sierra Leone sanctions régime, it noted that it was acting under Chapter VIII, and authorized ECOWAS, cooperating with the democratically-elected Government of Sierra Leone, to ensure the strict implementation of the petroleum and arms sanctions, including where necessary by halting inward maritime shipping in order to inspect and verify their cargoes and destinations.¹⁰⁰ At the same time, the Council also called upon regional organizations to act strictly in conformity with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.¹⁰¹ When the Council imposed diamond sanctions against Sierra Leone, it called upon all relevant regional organizations to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.¹⁰²

14.4.5 International organizations

When the Council established the Sierra Leone sanctions régime, it called upon all international organizations to act strictly in conformity with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.¹⁰³ In July 2000, when the Council imposed diamond sanctions, it requested “relevant international organizations” to offer assistance to the Government of Sierra Leone to facilitate the operation of a certificate-of-origin régime,¹⁰⁴ called upon them to act strictly in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations,¹⁰⁵ and invited them

¹⁰⁰ S/RES/1132 (8 October 1997), operative paragraph 8.

¹⁰¹ S/RES/1132 (8 October 1997), operative paragraph 11.

¹⁰² S/RES/1306 (5 July 2000), operative paragraph 9.

¹⁰³ S/RES/1132 (8 October 1997), operative paragraph 11.

¹⁰⁴ S/RES/1306 (5 July 2000), operative paragraph 3.

¹⁰⁵ S/RES/1306 (5 July 2000), operative paragraph 9.

to offer assistance to the Government of Sierra Leone to develop a well-structured and well-regulated diamond industry providing for the identification of the provenance of rough diamonds.¹⁰⁶

14.4.6 The Panel of Experts on the Sierra Leone sanctions régime

In July 2000, when the Security Council strengthened the sanctions régime by imposing diamond sanctions, it also requested the Secretary-General to establish a Panel of Experts to investigate matters relating to the implementation of the Sierra Leone sanctions régime.¹⁰⁷ The Panel, which would consist of no more than five members and would operate for a period of four months, was to undertake the following tasks: (a) Collecting information on possible violations of the arms embargo against Sierra Leone and on the link between the trade in diamonds and the trade in arms and related *matériel*, including through visits to Sierra Leone and other States and through making appropriate contacts;¹⁰⁸ (b) Considering the adequacy of air traffic systems in the region for detecting flights suspected of violating the arms sanctions;¹⁰⁹ (c) Participating in an exploratory hearing in New York on the role of diamonds in the Sierra Leone conflict and the link between the trade in diamonds and the trade in arms in that country;¹¹⁰ and (d) Reporting to the Council, through the 1132 Committee and by 31 October 2000, with its observations and recommendations on strengthening the implementation of the arms and diamond sanctions.¹¹¹

¹⁰⁶ S/RES/1306 (5 July 2000), operative paragraph 11.

¹⁰⁷ S/RES/1306 (5 July 2000), operative paragraph 19.

¹⁰⁸ S/RES/1306 (5 July 2000), operative paragraph 19(a).

¹⁰⁹ S/RES/1306 (5 July 2000), operative paragraph 19(b).

¹¹⁰ S/RES/1306 (5 July 2000), operative paragraph 19(c). For details relating to the exploratory hearing, see: *Summary report on the exploratory hearing on Sierra Leone diamonds*, above note 57.

¹¹¹ S/RES/1306 (5 July 2000), operative paragraph 19(d).

The Panel of Experts submitted its WRITTEN report to the Council in December 2000.¹¹² In its report, the Panel outlined findings on the illicit trade in Sierra Leone diamonds,¹¹³ on the flow of arms and related *matériel* and other forms of military assistance into Sierra Leone,¹¹⁴ and on air traffic control systems in West Africa.¹¹⁵ The Panel's report remains perhaps the most sophisticated analysis yet completed, by a body charged with the administration, implementation or enforcement of a United Nations sanctions régime, of the challenges that must be overcome in order to facilitate the effective implementation of a sanctions régime. The report contained a range of insightful observations and provided numerous concrete recommendations for action that might be taken to address violations of the Sierra Leone sanctions and United Nations sanctions in general. The Security Council has subsequently acted upon many of the Sierra Leone Panel's recommendations in addressing the situations in Sierra Leone, Liberia and West Africa in general, and in its oversight of other arms embargoes and diamond sanctions.

In its findings on the diamond trade, the Panel noted that diamonds were perhaps the major source of income for the armed rebel group the Revolutionary United Front (RUF), providing more than enough finance to sustain the group's military operations.¹¹⁶ It also noted that, while some RUF diamonds had been traded informally in Guinea, the vast majority had been traded via Liberia, in such a manner that it was inconceivable that the trade was being conducted without the permission and involvement of Liberian government

¹¹² S/2000/1195 (20 December 2000), enclosure: *Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000), paragraph 19, in relation to Sierra Leone.*

¹¹³ See in general: *ibid*, paragraphs 1-18, 65-150.

¹¹⁴ See in general: *ibid*, paragraphs 19-31, 167-273.

¹¹⁵ See in general: *ibid*, paragraphs 32-46, 274-315.

¹¹⁶ *Ibid*, paragraph 1.

officials at the highest level.¹¹⁷ The Panel also reviewed Sierra Leone's Certificate of Origin régime and noted that, while the régime was a positive development, it was unlikely to achieve the desired results in the absence of effective controls of the diamond trade in neighbouring countries and in the major global diamond trading centres.¹¹⁸

Based on its findings, the Panel made a number of detailed recommendations for improving the implementation of the diamond sanctions, including that: (a) A global certification scheme should be developed and should be endorsed by the Security Council;¹¹⁹ (b) Until such a global certification scheme had been developed, all diamond exporting countries in West Africa, and in particular Guinea and Côte d'Ivoire, should be required to adopt certification schemes such as the one operating in Sierra Leone. If they had not adopted such schemes within six months, then the Security Council should impose sanctions upon the export of diamonds from those countries;¹²⁰ (c) Diamond sanctions should be imposed against Liberia until it had demonstrated that it was no longer involved in the trafficking of arms to, or diamonds from, Sierra Leone, and until it too had adopted a Certificate of Origin régime for the export of diamonds;¹²¹ (d) The Security Council should place sanctions on so-called Gambian diamonds, until that country's diamond trade could be verified;¹²² (e) Invoices from certain diamond exporting countries should be checked thoroughly, and where there was doubt about provenance or origin, parcels should be seized until that doubt had been resolved. In addition, urgent consideration should be given

¹¹⁷ *Ibid*, paragraph 2.

¹¹⁸ *Ibid*, paragraphs 4-6.

¹¹⁹ *Ibid*, paragraphs 7, 155.

¹²⁰ *Ibid*, paragraphs 8, 156.

¹²¹ *Ibid*, paragraphs 9, 157.

¹²² *Ibid*, paragraphs 10, 158.

to extending a Certificate of Origin régime to those countries as soon as possible;¹²³ (f) Major diamond trading centres, including Belgium, the United Kingdom, Switzerland, South Africa, India, the United States and Israel, should reach a common agreement on a system for verifying the country of origin and provenance of diamonds;¹²⁴ (g) An annual statistical report should be prepared on global diamond production, by the World Diamond Council or the certification body that was expected to emerge from the Kimberley Process, distinguishing between the countries of origin and countries of provenance of the diamonds being produced each year;¹²⁵ (h) If diamonds were mixed and/or re-invoiced in a free trade zone, then the government of that country must take responsibility for verifying the *bona fides* of the diamonds before they were re-exported;¹²⁶ (i) The Security Council should possess an ongoing capacity to monitor the implementation of sanctions.¹²⁷

In its findings on the flow of weapons and the manner in which lax air traffic control had led to increased violations of the sanctions, the Panel noted that the region was “awash with arms” and reported that it had found “unequivocal and overwhelming evidence” that Liberia had been actively supporting the RUF at all levels, by providing it with training, weapons and related *matériel*, logistical support, a staging ground for attacks and a safe haven for retreat, recuperation and public relations activities.¹²⁸ The Panel had also found conclusive evidence of weapons supply lines via Burkina Faso to Liberia and on to Sierra

¹²³ *Ibid*, paragraphs 11-12, 159-160. The countries mentioned were Uganda, Central African Republic, Ghana, Namibia, Congo (Brazzaville), Malawi, Zambia and Burkina Faso.

¹²⁴ *Ibid*, paragraphs 14, 162.

¹²⁵ *Ibid*, paragraphs 15, 163.

¹²⁶ *Ibid*, paragraphs 16, 164. Switzerland and the United Arab Emirates were singled out in this regard, due to the large volume of diamonds flowing through those countries.

¹²⁷ *Ibid*, paragraphs 17, 165. The Panel noted that three Panels of Experts had been established concurrently and that all three were investigating many of the same issues, thus leading to overlap and duplication.

Leone and contended that President Charles Taylor of Liberia was actively involved in fuelling violence in Sierra Leone.¹²⁹ Referring to the role of arms merchants in the supply of arms throughout the region, the Panel noted that regional air surveillance was inadequate for detecting or deterring merchants from supplying weapons to Liberia and the RUF.¹³⁰ In addition, Liberia itself had lax maritime and aviation laws, thus providing owners of ships and aircraft with “maximum discretion and cover” to engage in sanctions violations.¹³¹

Based on its findings, the Panel made a number of recommendations for improving the implementation of the arms sanctions and the effectiveness of air traffic control in the region, including that: (a) All planes operating with a Liberian registration, but not based in Liberia, should be grounded immediately;¹³² (b) All operators of aircraft on the Liberian register should be required to file their airworthiness and operating licences and their insurance documents with the International Civil Aviation Organization (ICAO), and the aircraft of any operators failing to comply with that requirement should be grounded permanently;¹³³ (c) The Security Council should publicize the list of grounded Liberian aircraft;¹³⁴ (d) The Security Council should endorse Burkina Faso’s proposal for a mechanism to monitor all arms imports into its territory;¹³⁵ (e) All imports of arms and related *matériel* into Burkina Faso over the previous five years should be investigated;¹³⁶ (f) The Security Council should encourage the reinforcement of the ECOWAS Programme

¹²⁸ *Ibid*, paragraphs 19-20.

¹²⁹ *Ibid*, paragraphs 21-23.

¹³⁰ *Ibid*, paragraph 24.

¹³¹ *Ibid*, paragraph 25.

¹³² *Ibid*, paragraphs 32, 255.

¹³³ *Ibid*, paragraphs 33, 256.

¹³⁴ *Ibid*, paragraphs 34, 257.

¹³⁵ *Ibid*, paragraphs 35, 258.

for Coordination and Assistance for Security and Development (PCASED), with support from Interpol and the World Customs Organization, and with the aim of establishing a capacity to monitor compliance with arms embargoes;¹³⁷ (g) The Security Council should also encourage ECOWAS Member States to conclude binding bilateral agreements with neighbour States, on a system of control that would record, license, collect and destroy small arms and light weapons;¹³⁸ (h) A system of profiling should be developed for arms brokers and intermediaries supplying weapons to the RUF and for major cargo companies involved in such supply;¹³⁹ (i) The Security Council should consider placing an embargo on weapons exports from specific producer countries until internationally acceptable certification schemes had been developed for the trade of weapons;¹⁴⁰ (j) Firearms recovered from rebels should be investigated, in order to identify those involved in the supply of those weapons;¹⁴¹ (k) Existing Security Council arms embargoes should be amended to include a ban on the provision of military and paramilitary training;¹⁴² (l) Consideration should be given to developing a training programme on sanctions monitoring for national law enforcement and security agencies, as well as for airport and customs officials in West Africa, as well as to developing a manual on the monitoring of sanctions at airports for worldwide use;¹⁴³ (m) Consideration should be given to placing

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*, paragraphs 36, 259.

¹³⁸ *Ibid.*, paragraphs 37, 260.

¹³⁹ *Ibid.*, paragraphs 38, 261.

¹⁴⁰ *Ibid.*, paragraphs 39, 262.

¹⁴¹ *Ibid.*, paragraphs 40, 263.

¹⁴² *Ibid.*, paragraphs 42, 265.

¹⁴³ *Ibid.*, paragraphs 44, 267.

United Nations monitors at major airports in the region;¹⁴⁴ and (n) The Security Council should consider ways to improve air traffic control and surveillance in West Africa, including by encouraging the installation of primary radar or “pseudo radar”, by requiring the use in the region of a Global Positioning System, and by encouraging the ICAO and other interested agencies to assist States in reinforcing the financial autonomy of bodies established to manage air navigation services.¹⁴⁵

In addition to its recommendations specific to the situation in Sierra Leone, the Panel also made recommendations on general matters affecting the implementation of the sanctions against Sierra Leone. The Panel recommended that, in light of the support being provided to the RUF by Liberia, the Security Council should consider applying travel sanctions against Liberian officials and diplomats, until Liberia had stopped supporting the RUF and ceased violating United Nations sanctions.¹⁴⁶ The Panel also recommended that the Council consider placing a temporary embargo on Liberian timber exports, until Liberia had demonstrated convincingly that it was no longer involved in trafficking arms to, or diamonds from, Sierra Leone.¹⁴⁷ The Panel further recommended that the Security Council should consider creating a capacity within the United Nations for the ongoing monitoring of Security Council sanctions and embargoes, observing that it was imperative to establish an “in-house” knowledge base on issues such as conflict diamonds and the illicit trade in weapons and related *matériel*.¹⁴⁸

¹⁴⁴ *Ibid*, paragraphs 45, 268.

¹⁴⁵ *Ibid*, paragraphs 46, 269.

¹⁴⁶ *Ibid*, paragraphs 48, 271.

¹⁴⁷ *Ibid*, paragraphs 49, 272.

¹⁴⁸ *Ibid*, paragraphs 50, 273.

14.5 Termination of aspects of the Sierra Leone sanctions régime

As noted above in the section relating to the scope of the sanctions régime, aspects of the sanctions have been terminated at various stages during the course of the régime. The terminated aspects of the régime include the initial sanctions régime imposed against Sierra Leone in general, with the aim of securing the return to power of the democratically-elected Government of Sierra Leone,¹⁴⁹ and the diamond sanctions.¹⁵⁰ At the time of writing, the arms and targeted travel sanctions remain in place.

14.6 Notable aspects of the Sierra Leone sanctions régime

The Sierra Leone sanctions régime has exhibited a number of noteworthy characteristics. First, the Council established its second Panel of Experts to investigate the implementation of a sanctions régime. Second, the Council again targeted the link between the diamond trade and the flow of illicit weapons by imposing sanctions against the export from Sierra Leone of uncertified diamonds. It thus applied diamond sanctions for the second time, after having first experimented with them against UNITA. Third, the Council utilized time-limits for only the second time, after its experimentation with such limits in the Ethiopia and Eritrea sanctions régime, by outlining time-limits for the diamond sanctions. Fourth, the sanctions again targeted a sub-State entity. Perhaps most notable, however, was the manner

¹⁴⁹ The petroleum sanctions were terminated in March 1998, upon the return to Sierra Leone of its democratically-elected President: S/RES/1156 (16 March 1998), operative paragraph 2. The remaining initial sanctions – the arms embargo and the targeted travel sanctions – were terminated in June 1998, at the same time that the Council imposed sanctions targeting the activities of the military junta and the RUF: S/RES/1171 (5 June 1998), operative paragraph 1.

¹⁵⁰ In June 2003, when the most recent period of extension of the diamond sanctions expired, the members of the Council agreed not to renew the diamond sanctions, in light of the Government of Sierra Leone's increased efforts to manage its diamond industry and ensure proper control over diamond areas, and in light of its full participation in the Kimberley Process: SC/7778 (5 June 2003): *Press statement on the Sierra Leone Diamond Embargo by the President of the Security Council*.

in which the findings of the Sierra Leone Panel of Experts led to the establishment of a new sanctions régime against another target – Liberia.

15. *The sanctions régime against the Federal Republic of Yugoslavia (the “Kosovo sanctions régime”)*¹

The Security Council imposed sanctions against the Federal Republic of Yugoslavia to address the situation in Kosovo in March 1998, after a period of rising tension between Serbian authorities and the Kosovar Albanian community. The escalating tension had recently led to guerilla attacks on police attacks, to which Yugoslav security forces had responded with excessive force, resulting in at least 80 fatalities. The sanctions consisted of an arms embargo against the territory of the Federal Republic of Yugoslavia, including Kosovo. The embargo was eventually terminated in September 2001.

15.1 The constitutional basis for imposing sanctions against the Federal Republic of Yugoslavia to address the situation in Kosovo

When the Security Council established the Kosovo sanctions régime, it did not explicitly identify a threat to or breach of international peace and security. Moreover, although the Council had determined on numerous occasions that the situation in parts of the former Yugoslavia had constituted a threat to international peace and security,² it had not made a prior determination of a threat to or breach of the peace in relation to the situation in Kosovo. The Council did make it clear, however, that it was acting under Chapter VII of the Charter of the United Nations,³ thus raising the question whether the Security Council’s

¹ In its decisions relating to the situation in Kosovo, the Council consistently referred to the entity against which sanctions were imposed as the “Federal Republic of Yugoslavia”, rather than as the “Federal Republic of Yugoslavia (Serbia and Montenegro)”.

² See, for example, the threats identified in the resolutions pertaining to the other sanctions régimes imposed to address the situation in the former Yugoslavia, as noted above in sections 4.2, 7.2 and 9.2.

³ S/RES/1160 (31 March 1998), preambular paragraph 8.

decision to authorize measures to maintain or restore international peace and security could be considered valid in the absence of a prior determination of a threat to or breach of the peace.⁴

The Council's failure to make a determination of a threat to the peace can be attributed to the positions of two of its permanent members, as neither the Russian Federation nor China considered the situation in Kosovo to be a threat to international peace and security.⁵ The Russian and Chinese positions meant that, although a number of members of the Council explicitly characterised the situation in Kosovo as a threat to international peace and security,⁶ it was not possible to include a determination of such a threat in the text of resolution 1160 (1998). The extent to which the Council's failure to make a prior determination of a threat to or breach of international peace and security might have affected the validity of its decision to apply sanctions is open to conjecture. Although the Russian and Chinese positions suggest that they did not consider resolution 1160 (1998) to contain a determination of a threat to or breach of international peace and security, another interpretation might be that the Council's adoption of resolution 1160 (1998) under Chapter VII amounted to an implicit determination of a threat to international peace and

⁴ During the meeting at which the Council adopted resolution 1160 (1998), the representative of Egypt in fact noted that the resolution had been adopted under Chapter VII without a prior determination of a threat to international peace and security and argued that, although the Security Council was "the master of its own procedures", as a rule the constitutional requirements of the Charter should be followed scrupulously: see S/PV.3868 (31 March 1998), *Provisional verbatim record of the 3868th meeting of the Security Council*, 29.

⁵ See S/PV.3868, p. 11. The representative of the Russian Federation stated that, "the situation in Kosovo, despite its complexity, does not constitute a threat to regional, much less international peace and security" and emphasised that it was "precisely [that] understanding that [was] reflected in the draft resolution". The representative of China stated that, "We do not think that the situation in Kosovo endangers regional peace and security".

⁶ See, e.g., the positions of: Japan, *ibid.* p. 3; Costa Rica, *ibid.*, p. 3; Sweden, *ibid.*, p. 5; Slovenia, *ibid.*, pp. 7-8; Portugal, *ibid.*, p. 10; the United Kingdom, *ibid.*, p. 12; and the United States, *ibid.*, p. 13.

security.⁷ In any case, however, the Council ultimately affirmed that the deterioration of the situation in Kosovo constituted a threat to peace and security in the region.⁸ The Council also invoked Chapter VII in resolutions related to the sanctions.⁹

15.2 The objective of the Kosovo sanctions régime

When it established the Kosovo sanctions régime, the Security Council articulated a number of objectives. The general objectives of the régime were to foster peace and stability in Kosovo¹⁰ and to bring about a political solution to the situation in Kosovo through dialogue.¹¹ The régime's more particular objectives consisted of various steps that the Federal Republic of Yugoslavia would have to take in order for the sanctions to be terminated. Those steps included: (a) Beginning a substantive dialogue on "political status issues";¹² (b) Withdrawing its special police units and preventing action by its security forces

⁷ The United Kingdom appeared to employ such an interpretation, arguing that: "In adopting this resolution, the Security Council sends an unmistakable message: that by acting under Chapter VII of the Charter, the Council considers that the situation in Kosovo constitutes a threat to international peace and security in the Balkans region": S/PV.3868, p. 12.

⁸ See: S/RES/1199 (23 September 1998), preambular paragraph 14 ("Affirming that the deterioration of the situation in Kosovo, Federal Republic of Yugoslavia, constitutes a threat to peace and security in the region"); S/RES/1203 (24 October 1998), preambular paragraph 15 ("Affirming that the unresolved situation in Kosovo constitutes a continuing threat to peace and security in the region"); S/RES/1244 (10 June 1999), preambular paragraph 12 ("Determining that the situation in the region continues to constitute a threat to international peace and security").

⁹ S/RES/1203 (24 October 1998), preambular paragraph 16; S/RES/1244 (10 June 1999), preambular paragraph 13; S/RES/1367 (10 September 2001), preambular paragraph 5.

¹⁰ S/RES/1160 (31 March 1998), operative paragraph 8.

¹¹ S/RES/1160 (31 March 1998), operative paragraph 1. The Council also expressed its support for "an enhanced status for Kosovo which would include a substantially greater degree of autonomy and meaningful self-administration", thus suggesting that an implicit objective of the sanctions might have been to ensure that there was such autonomy and self-administration in Kosovo: see *ibid.*, operative paragraph 5. The Council subsequently embraced this as an explicit objective of the sanctions régime: S/RES/1199 (23 September 1998), preambular paragraph 12; S/RES/1203 (24 October 1998), preambular paragraph 8; S/RES/1244 (10 June 1999), preambular paragraph 11.

¹² S/RES/1160 (31 March 1998), operative paragraph 16(a).

against the civilian population;¹³ (c) Allowing access to Kosovo to humanitarian organizations, representatives of the Contact Group and other embassies;¹⁴ (d) Accepting a mission by the Personal Representative of the Chairman-in-Office of the OSCE for the Federal Republic of Yugoslavia that would include a new and specific mandate for addressing the problems in Kosovo, as well as the return of the long-term missions of the OSCE;¹⁵ and (e) Facilitating a mission to Kosovo by the United Nations High Commissioner for Human Rights.¹⁶

The Council subsequently articulated some additional objectives connected to the sanctions régime. In September 1998, it demanded that the Federal Republic of Yugoslavia: (a) Cease all action by security forces affecting the civilian population and withdraw the security units used for civilian repression;¹⁷ (b) Enable effective and continuous international monitoring of the situation in Kosovo by the European Community Monitoring Mission and diplomatic missions;¹⁸ (c) Facilitate, in agreement with the UNHCR and the ICRC, the safe return of refugees and displaced persons and free and unimpeded access to Kosovo for humanitarian organizations and supplies;¹⁹ and (d) Agree with the Kosovo Albanian community on a timetable for implementing confidence-building measures and finding a political solution to the situation in Kosovo.²⁰

¹³ S/RES/1160 (31 March 1998), operative paragraph 16(b).

¹⁴ S/RES/1160 (31 March 1998), operative paragraph 16(c).

¹⁵ S/RES/1160 (31 March 1998), operative paragraph 16(d).

¹⁶ S/RES/1160 (31 March 1998), operative paragraph 16(e).

¹⁷ S/RES/1199 (23 September 1998), operative paragraph 4(a).

¹⁸ S/RES/1199 (23 September 1998), operative paragraph 4(b).

¹⁹ S/RES/1199 (23 September 1998), operative paragraph 4(c).

²⁰ S/RES/1199 (23 September 1998), operative paragraph 4(d).

15.3 The scope of the Kosovo sanctions régime

The Kosovo sanctions consisted of an arms embargo against the territory of the Federal Republic of Yugoslavia, including Kosovo. More specifically, the Council decided that all States should prevent the sale or supply to the Federal Republic of Yugoslavia of arms and related *matériel*.²¹ In a novel qualification of the meaning of the term “arms and related *matériel*”, the Council noted that States were also required to prevent the arming and training of forces for terrorist activities in the Federal Republic of Yugoslavia.²² Although the Council outlined some subsequent exemptions from the sanctions,²³ the basic scope of the measures remained unchanged throughout the duration of the sanctions régime.

15.4 The administration, monitoring and enforcement of the Kosovo sanctions régime

In its oversight of the Kosovo sanctions régime, the Council bestowed responsibilities for the administration, implementation and enforcement of the sanctions upon a Sanctions Committee, the Secretary-General, and the United Nations Preventive Deployment Force (UNPREDEP).

15.4.1 The Kosovo Sanctions Committee

As with the majority of its sanctions régimes, the Council bestowed primary responsibility for the administration of the Kosovo sanctions régime upon a Sanctions Committee, which was established in accordance with rule 28 of the provisional rules of

²¹ S/RES/1160 (31 March 1998), operative paragraph 8.

²² *Ibid.*

²³ See, e.g., S/RES/1203 (24 October 1998), operative paragraph 15 [exempting from the sanctions régime equipment for the use of the OSCE and NATO verification missions]; S/RES/1244 (10 June 1999), operative paragraph 16 [exempting from the sanctions régime equipment for the use

procedure, when the sanctions were initially imposed.²⁴ The Council assigned to that committee (“the 1160 Committee” or the “Kosovo Committee”) the same basic tasks it had assigned to other sanctions committees. Those tasks included reporting to the Council on its work and with its observations and recommendations, and: (a) Seeking from all States information regarding action taken by them to implement the sanctions;²⁵ (b) Considering information brought to its attention by any State concerning sanctions violations and recommending appropriate measures in response thereto;²⁶ (c) Making periodic reports to the Security Council on information submitted to it regarding alleged violations of the sanctions;²⁷ (d) Promulgating guidelines to facilitate the implementation of the sanctions;²⁸ and (e) Examining the reports submitted to it by States.²⁹

In the course of its activities, the Kosovo committee issued three annual reports and one final report.³⁰ The main observation the Committee made was that its work was being affected by the absence of an effective, comprehensive monitoring mechanism to ensure the effective implementation of the sanctions.³¹ Among the committee’s major recommendations in relation to securing the effective implementation of the Kosovo sanctions were that: (a) An

of the international civil and security presences – which subsequently evolved into UNMIK and KFOR].

²⁴ S/RES/1160 (31 March 1998), operative paragraph 9.

²⁵ S/RES/1160 (31 March 1998), operative paragraph 9(a).

²⁶ S/RES/1160 (31 March 1998), operative paragraph 9(b).

²⁷ S/RES/1160 (31 March 1998), operative paragraph 9(c).

²⁸ S/RES/1160 (31 March 1998), operative paragraph 9(d).

²⁹ S/RES/1160 (31 March 1998), operative paragraph 9(e).

³⁰ S/1999/216 (4 March 1999), annex: *Report of the Security Council Committee established pursuant to resolution 1160 (1998)*, [hereafter “*First report of the 1160 Committee*”, containing a report on the activities of the Committee from April-December 1998]; S/2000/633 (29 June 2000), annex: *Report of the 1160 Committee for 1999*; S/2001/102 (5 February 2001), annex: *Report of the 1160 Committee for 2000*; S/2001/931 (3 October 2001), annex: *Final report of the 1160 Committee* [containing a report on the activities of the Committee from 1 January to 10 September 2001, when the Committee was dissolved].

expert study should be conducted on the military potential of the parties targeted by the sanctions, including analysis of external funding;³² (b) The Secretariat should develop more uniform reporting requirements to facilitate the collection of relevant information from States;³³ and (c) Further steps should be taken to strengthen the envisaged monitoring arrangements;³⁴

15.4.2 The Secretary-General

When the Council established the sanctions régime against the Federal Republic of Yugoslavia to address the situation in Kosovo, it requested the Secretary-General to undertake the following responsibilities: (a) providing all necessary assistance to the 1160 Committee;³⁵ (b) keeping the Council regularly informed and reporting on the situation in Kosovo and the implementation of resolution 1160 (1998) at thirty day intervals;³⁶ and (c) reporting in the event that the Federal Republic of Yugoslavia had complied with the objectives of the sanctions régime, in which event the Council would take action to terminate them.³⁷

15.4.3 States

When the Council established the Kosovo sanctions régime, it called upon all States to act in accordance with the sanctions, notwithstanding the existence of any conflicting legal

³¹ *Report of the 1160 Committee for 1999, ibid, paragraph 20; Report of the 1160 Committee for 2000, ibid, paragraph 17.*

³² *First report of the 1160 Committee, above note 30, paragraph 21.*

³³ *Ibid, paragraph 23.*

³⁴ *Report of the 1160 Committee for 1999, above note 30, paragraph 24.*

³⁵ S/RES/1160 (31 March 1998), operative paragraph 11.

³⁶ S/RES/1160 (31 March 1998), operative paragraph 14.

³⁷ S/RES/1160 (31 March 1998), operative paragraph 16.

rights or obligations.³⁸ At the same time, it also requested States to report to the 1160 Committee on steps taken to implement the sanctions.³⁹ In subsequent decisions, the Council: recalled the obligations of all States to implement fully the sanctions;⁴⁰ urged States represented in the Federal Republic of Yugoslavia to make available personnel to fulfil the responsibility of carrying out effective and continuous international monitoring in Kosovo until the objectives of the sanctions régime had been achieved;⁴¹ requested States to pursue all means consistent with their domestic legislation and relevant international law to prevent funds collected on their territory being used to contravene the sanctions;⁴² and urged States to make personnel available to the Verification Mission in Kosovo.⁴³

15.4.4 International and regional organizations

When the Council established the Kosovo sanctions régime, it called upon all international and regional organizations to act in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.⁴⁴ At the same time, the Council also invited the OSCE to keep the Secretary-General informed on the situation in Kosovo and on the measures it had taken in that regard,⁴⁵ and requested the Secretary-General to consult with regional organizations on recommendations for the establishment of a comprehensive régime to monitor the implementation of the sanctions.⁴⁶

³⁸ S/RES/1160 (31 March 1998), operative paragraph 10.

³⁹ S/RES/1160 (31 March 1998), operative paragraph 12.

⁴⁰ S/RES/1199 (23 September 1998), operative paragraph 7.

⁴¹ S/RES/1199 (23 September 1998), operative paragraph 9.

⁴² S/RES/1199 (23 September 1998), operative paragraph 11.

⁴³ S/RES/1203 (24 October 1998), operative paragraph 7.

⁴⁴ S/RES/1160 (31 March 1998), operative paragraph 10.

⁴⁵ S/RES/1160 (31 March 1998), operative paragraph 13.

⁴⁶ S/RES/1160 (31 March 1998), operative paragraph 15.

In September 1998, the Council urged international organizations represented in the Federal Republic of Yugoslavia to make available personnel to fulfil the responsibility of carrying out effective and continuous international monitoring in Kosovo until the objectives of the sanctions régime had been achieved.⁴⁷ In October 1998, the Council endorsed the agreements reached between the Federal Republic of Yugoslavia and the OSCE, and the Federal Republic of Yugoslavia and NATO, concerning the verification of compliance by the Federal Republic of Yugoslavia with the requirements of resolution 1199 (1998),⁴⁸ and it urged international organizations to make personnel available to the Verification Mission in Kosovo.⁴⁹

15.4.5 The United Nations Preventive Deployment Force (UNPREDEP)

In July 1998, the Council decided that the United Nations Preventive Deployment Force (UNPREDEP), which was based in the former Yugoslav Republic of Macedonia, would monitor and report on illicit arms flows and other activities prohibited by the Kosovo sanctions régime.⁵⁰

15.4.6 The Security Council mission to Kosovo

In April 2000, the Council decided to send a mission to Kosovo.⁵¹ The purpose of the mission was to enhance support for the implementation of the Council's decisions addressing the situation in Kosovo, with one component being to review the ongoing

⁴⁷ S/RES/1199 (23 September 1998), operative paragraph 9.

⁴⁸ S/RES/1203 (24 October 1998), operative paragraph 1. For the agreement between the Federal Republic of Yugoslavia and the OSCE, see: S/1998/978 (20 October 1998), annex. For the agreement between the Federal Republic of Yugoslavia and NATO, see: S/1998/991 (23 October 1998), annex.

⁴⁹ S/RES/1203 (24 October 1998), operative paragraph 7.

⁵⁰ S/RES/1186 (1998) (21 July 1998), operative paragraph 1.

implementation of the sanctions.⁵² In its report, the mission noted that it had discussed with KFOR the issue of strengthening of the implementation of the sanctions.⁵³ The KFOR Commander had reported to the mission that he was sending monthly reports to NATO regarding the implementation of the sanctions.⁵⁴ As part of its findings, the mission expressed the view that detailed information on KFOR's activities in the implementation of the sanctions should be provided to the 1160 Committee.⁵⁵

15.5 Termination of the Kosovo sanctions régime

In early September 2001, the Secretary-General sent a letter to the President of the Security Council, stating that he believed that the Federal Republic of Yugoslavia had complied with the provisions of resolution 1160 (1998).⁵⁶ As part of his reasons for reaching such a conclusion, the Secretary-General noted that the new authorities of the Federal Republic of Yugoslavia were cooperating constructively with the international community in its efforts to bring peace and stability to the Balkan region.⁵⁷ The Secretary-General also referred to the Council's own presidential statement of 16 March 2001, by which the Council had welcomed the close contact between the Government of the Federal Republic of Yugoslavia, the United Nations Interim Administration in Kosovo (UNMIK) and the international security forces in Kosovo (KFOR), and had stressed the importance of

⁵¹ S/2000/320 (14 April 2000): *Letter dated 14 April 2000 from the President of the Security Council addressed to the Secretary-General.*

⁵² *Ibid*, annex: *Security Council mission on the implementation of resolution 1244 (1999) – Terms of reference*, paragraph 2(d)

⁵³ S/2000/363 (29 April 2000): *Report of the Security Council mission on the implementation of Security Council resolution 1244 (1999)*, paragraph 15.

⁵⁴ *Ibid*, paragraph 16.

⁵⁵ *Ibid*, paragraph 34.

⁵⁶ S/2001/849 (6 September 2001): *Letter dated 6 September 2001 from the Secretary-General addressed to the President of the Security Council*, p. 2.

substantial dialogue between Kosovo political leaders and the Government of the Federal Republic of Yugoslavia.⁵⁸ On 10 September 2001, the Council adopted resolution 1367 (2001), in which it noted with satisfaction that the conditions for lifting the sanctions had been satisfied,⁵⁹ decided to terminate the Kosovo sanctions régime,⁶⁰ and dissolved the Kosovo sanctions committee.⁶¹

15.6 Notable aspects of the Kosovo sanctions régime

The most notable aspect of the Kosovo sanctions régime was the manner in which the Security Council imposed sanctions without first determining the existence of a threat to the peace. As discussed above, this was problematic from a “constitutional” perspective, as the U.N. founders appear to have designed Chapter VII in the understanding that, in accordance with Article 39 of the Charter, the Security Council would first determine that there is a threat to or breach of the peace before acting to employ enforcement measures under Chapter VII. The Council has not repeated the practice in regard to subsequent sanctions régimes. This is not to say that it will not repeat the practice in future, but it does

⁵⁷ *Ibid.*

⁵⁸ S/PRST/2001/8: *Presidential statement dated 16 March 2001.*

⁵⁹ S/RES/1367 (10 September 2001), preambular paragraph 2 [noting that the conditions contained in operative paragraphs 16(a)-(e) of resolution 1160 (1998) had been satisfied].

⁶⁰ S/RES/1367 (10 September 2001), operative paragraph 1.

⁶¹ S/RES/1367 (10 September 2001), operative paragraph 2.

suggest that, where possible, the Security Council will seek to identify a threat to or breach of the peace prior to imposing sanctions under Chapter VII of the Charter.

16. The sanctions régime against Afghanistan/the Taliban/Al Qaida¹

The Security Council first imposed sanctions against the Taliban régime in Afghanistan in October 1999, after the Taliban had failed to comply with its demands to stop providing sanctuary for international terrorists and to cooperate with efforts to bring indicted terrorists to justice. The sanctions initially consisted of a complex mixture of measures, including travel and aviation sanctions, with the aim of forcing the Taliban to hand over Usama Bin Laden to authorities in countries that had issued an indictment for him. The objectives, scope, target and geographical application of the sanctions régime have evolved considerably since the sanctions were first imposed. The focus of the sanctions régime is now upon the activities not just of the Taliban, but also of Al Qaida. Moreover, the sanctions are no longer concentrated predominantly upon activities taking place in Afghanistan. The Taliban/Al Qaida sanctions régime has therefore become the first régime to focus upon targets that have no specific geographical base.²

¹ There has been some inconsistency in the spelling of the name "Al Qaida" in the decisions of the Security Council. The three most common forms have been "Al Qaeda", "Al Qa'ida" and "Al Qaida". The Council appears to have moved towards using the latter formulation, as it appears in most recent decisions. "Al Qaida" is thus the term that is used here.

² Although earlier sanctions régimes have sought to restrict the activities of targets outside the geographical base of that target, prior to the Taliban/Al Qaida régime, the targets of sanctions régimes had nevertheless maintained a particular geographical base, thus meaning that the primary focus of the sanctions régimes was upon restricting the target's ability to act freely beyond that geographical base. By abolishing the connection between the Taliban/Al Qaida régime and the territories of Afghanistan, the Security Council was therefore breaking new ground in connection with a traditional sanctions régime.

The Council also broke new ground in September 2001 by adopting a resolution requiring States to take steps to counter terrorism in general, without stipulating the particular entities or individuals against which those steps must be taken, let alone linking those entities or individuals with a geographic base. Under resolution 1373 (2001), the Council required States to take a range of steps to counter terrorism and established a Committee of the Security Council - the Counter-terrorism Committee (CTC) - to monitor the implementation of those steps. Although the counter-terrorism régime shares some characteristics with sanctions régimes, such as the fact that it obligates States to take certain measures short of force to

16.1 The constitutional basis for imposing sanctions against the Taliban/Al Qaida

When the Security Council first imposed sanctions against the Taliban, it strongly condemned the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and reaffirmed its conviction that the suppression of international terrorism was essential for the maintenance of international peace and security.³ The Council then determined that the failure of the Taliban to comply with a demand it had made in December 1998 to stop providing sanctuary and training for international terrorists and their organizations and to cooperate with efforts to bring indicted terrorists to justice,⁴ constituted a threat to international peace and security.⁵ It also noted that it was acting under Chapter VII of the Charter, before proceeding to apply sanctions against the Taliban.⁶

In subsequent decisions related to the sanctions, the Council has consistently invoked Chapter VII of the Charter.⁷ There has been an evolution, however, in the Council's characterisation of the existence of a threat to international peace and security. While the Taliban régime retained power in Afghanistan, the Council again determined - on

address a threat to international peace and security, it is not treated as a sanctions régime in this study, due to the fact that it is not applied against a concrete, well-defined target. Although the counter-terrorism measures are to be taken against a class of organizations and people whose actions are connected with terrorism, it is left to each State to determine its own interpretation of what constitutes terrorism, a terrorist, a terrorist organization, terrorist acts, etc. Thus, although it is arguable that the counterterrorism régime amounts to a new form of sanctions régime, it is excluded from this study of traditional United Nations sanctions régimes.

³ S/RES/1267 (15 October 1999), preambular paragraph 5.

⁴ The Security Council had made this demand had been made in resolution 1214 (1998): S/RES/1214 (8 December 1998), operative paragraph 13.

⁵ S/RES/1267 (15 October 1999), preambular paragraph 8.

⁶ S/RES/1267 (15 October 1999), preambular paragraph 10.

⁷ S/RES/1333 (19 December 2000), preambular paragraph 19; S/RES/1363 (30 July 2001), preambular paragraph 2; S/RES/1388 (15 January 2001), preambular paragraph 3; S/RES/1390 (16

two occasions - that the failure of the Taliban to comply with the requirements of the sanctions régime constituted a threat to international peace and security,⁸ whilst also reaffirming that the suppression of international terrorism is essential for the maintenance of international peace and security.⁹ Since January 2002, however, the Council has reaffirmed that acts of international terrorism constitute a threat to international peace and security.¹⁰

16.2 The objectives of the Taliban/Al Qaida sanctions régime

The major initial objective of the Taliban/Al Qaida sanctions, as outlined by the Council in resolution 1267 (1999), was to ensure that the Taliban turned over Usama Bin Laden to authorities in a country where he had been indicted.¹¹ In December 2000, the Council outlined some additional requirements with which the Taliban needed to comply before the sanctions would be terminated. Thus, as well as ensuring that Usama Bin Laden was turned over to authorities in a country where he had been indicted, the sanctions régime also aimed to ensure that the Taliban: ceased providing sanctuary training for international terrorists; took measures to ensure that its territory was not being used by terrorists or for

January 2002), preambular paragraph 10; S/RES/1452 (20 December 2002), preambular paragraph 4; S/RES/1455 (17 January 2003), preambular paragraph 8.

⁸ S/RES/1333 (19 December 2000), preambular paragraph 14; S/RES/1363 (30 July 2001), preambular paragraph 2.

⁹ S/PRST/2000/12: *Presidential statement dated 7 April 2000*; S/RES/1333 (19 December 2000), preambular paragraph 7.

¹⁰ S/RES/1390 (16 January 2002), preambular paragraph 9; S/RES/1455 (17 January 2003), preambular paragraph 7.

¹¹ S/RES/1267 (15 October 1999), operative paragraphs 2, 14. Although the Council also reaffirmed its earlier demand that the Taliban cease providing sanctuary and training for international terrorists [see preambular paragraph 8 and operative paragraph 1, reaffirming the demand made earlier by the Council in S/RES/1214 (8 December 1998), operative paragraph 13], the fact that it noted in operative paragraph 14 that the sanctions would be terminated once the Taliban had handed over Bin Laden to authorities in a country where he had been indicted suggests that the most important objective of the sanctions régime was to ensure the capture of Bin Laden.

the organization of terrorist acts against other States; cooperated with efforts to bring indicted terrorists to justice; and closed terrorist camps within its territory.¹²

In January 2002, the Council determined that the Taliban had failed to comply with the existing objectives of the sanctions régime. Unlike previous resolutions on the subject, however, resolution 1390 (2002) did not explicitly state conditions the satisfaction of which would lead to termination of the sanctions régime.¹³ Instead, the Council stated that the sanctions would be reviewed after twelve months and either continued or improved, in keeping with “the principles and purposes” of resolution 1390 (2002).¹⁴ On two subsequent occasions, when strengthening further the implementation of the sanctions, the Council has again noted that the sanctions would be improved after a certain period of time, without articulating the conditions that must be satisfied before the sanctions could be terminated.¹⁵

16.3 The scope of the Taliban/Al Qaida sanctions régime

The Taliban/Al Qaida sanctions régime was initially imposed against the Taliban in general and consisted of a combination of aviation and financial sanctions. Under the aviation sanctions, all States were required to deny aircraft permission to land in or fly over their

¹² S/RES/1333 (19 December 2000), operative paragraphs 1, 2, 3. Operative paragraphs 23 and 24 of the same resolution also reinforce that these were the objectives of the régime.

¹³ The Council had done this in resolutions 1267 (1999) and 1333 (2000): see S/RES/1267 (15 October 1999), operative paragraph 14; S/RES/1333 (19 December 2000), operative paragraphs 23, 24.

¹⁴ S/RES/1390 (16 January 2002), operative paragraph 3. It is unclear why the Council decided to alter its approach and leave the objectives of the sanctions régime vague. One interpretation could be that as the objectives had been explicitly stated and endorsed in previous resolutions, there was no need to reiterate those objectives. Another interpretation, however, could be that the resolution was deliberately crafted to keep the objectives of the sanctions régime vague, so that it would be more difficult to terminate the sanctions. The fact that the Council has adopted two major resolutions, each of which modified significantly the contours of the Taliban/Al Qaida sanctions régime, suggests that the exclusion of specific references to tangible objectives is more than a mere oversight.

territories if owned or operated by the Taliban.¹⁶ Under the financial sanctions, States were required to freeze funds and other financial resources owned directly or indirectly by the Taliban.¹⁷ Subsequently, the régime has been strengthened a number of times, with the focus of sanctions shifting more towards Usama Bin Laden and Al Qaida.

In December 2000, the Security Council imposed a combination of arms, representative, financial, chemical and aviation sanctions. Under resolution 1333 (2000), States were required: to prevent the provision to the Taliban of arms and related *matériel*, as well as military expertise and assistance;¹⁸ to close all offices on their territories belonging to the Taliban and Afghan airlines;¹⁹ and to impose targeted financial sanctions against Usama Bin Laden and members of the Al Qaida organization;²⁰ to prevent the sale to Taliban-controlled areas of a particular chemical used in the production of opium;²¹ and to

¹⁵ S/RES/1455 (17 January 2003), operative paragraph 2 (noting that sanctions would be improved after twelve months); S/RES/1526 (30 January 2004), operative paragraph 3 (deciding that the sanctions would be further improved in eighteen months, or sooner if necessary).

¹⁶ S/RES/1267 (15 October 1999), operative paragraph 4(a). The Council exempted from the sanctions régime flights pursuant to a humanitarian need, such as those connected with the Hajj pilgrimage. Any exempted flights needed to be approved in advance by the 1267 Committee.

¹⁷ S/RES/1267 (15 October 1999), operative paragraph 4(b). The Council provided for the possibility of exceptions to the financial sanctions for situations of humanitarian need, as determined by the 1267 sanctions committee. It terminated the application of these exceptions in January 2003, however, when it streamlined the process for exemptions from the financial sanctions by then imposed against Usama Bin Laden, the Al Qaida, the Taliban and associates of those entities: S/RES/1452 (20 December 2002), operative paragraph 4.

¹⁸ S/RES/1333 (19 December 2000), operative paragraph 5. The Council outlined a number of exemptions from the arms embargo, however, for non-lethal supplies intended for humanitarian use, as approved by the 1267 Committee, and for protective clothing exported to Afghanistan for the personal use of United Nations personnel, representatives of the media, and humanitarian workers: *ibid*, operative paragraph 6.

¹⁹ S/RES/1333 (19 December 2000), operative paragraphs 8(a), 8(b).

²⁰ S/RES/1333 (19 December 2000), operative paragraph 8(c).

²¹ S/RES/1333 (19 December 2000), operative paragraph 10

prevent all aircraft flying to or from Taliban-controlled territories from landing in, departing from or over-flying their territories.²²

In January 2002 the Council adopted resolutions 1388 (2002) and 1390 (2002), which consolidated the sanctions by terminating certain components of the sanctions régime and streamlining others. Among the measures explicitly terminated were the sanctions against Ariana Afghanistan Airlines²³ and the ban which had been imposed against aircraft owned or operated by the Taliban.²⁴ Certain other measures lapsed due to the fact that the Council did not reaffirm them. Those measures included the representative sanctions imposed against the Taliban, the sanctions against the provision to Taliban-controlled territory of a particular chemical substance, and the aviation sanctions against flights to or from Taliban-controlled territory. Through resolution 1390 (2002), however, the Council also streamlined and strengthened the remaining sanctions. It also broadened the application of those sanctions, both in terms of the targets of the sanctions and of their geographical application. The Council thus decided that all States would implement financial, travel and arms sanctions against Usama Bin Laden, Al Qaida, the Taliban, and associates of those entities, as designated by a list maintained by the 1267 Committee. The Council thus required States: to

²² S/RES/1333 (19 December 2000), operative paragraph 11. The Council provided for the possibility of exemptions from these aviation sanctions for flights approved in advance by the Committee on the grounds of humanitarian need, including religious obligations such as the performance of the Hajj, or on the grounds that the flight would promote discussion of a peaceful resolution of the conflict in Afghanistan, or was likely to promote Taliban compliance with the objectives of the sanctions régime: *ibid.* The Council also provided for exemptions for flights being undertaken for humanitarian purposes by organizations approved by the 1267 committee: *ibid.*, operative paragraph 12.

²³ In resolution 1388 (2002), the Council terminated the ban on Taliban-controlled aircraft, in so far as it applied to Ariana Afghanistan Airlines: S/RES/1388 (15 January 2002), operative paragraph 1. In operative paragraph 2 of that same resolution, the Council also terminated the requirement that States close all offices belonging to Ariana Afghanistan Airlines.

²⁴ S/RES/1390 (16 January 2002), operative paragraph 1.

freeze the financial and economic resources of those entities;²⁵ to prevent the entry into or transit through their territories of individuals appearing on the “black-list”,²⁶ and to prevent the provision to those entities and individuals of arms and related *matériel*, expertise and assistance.²⁷ Moreover, the implementation of sanctions was no longer linked primarily to activities taking place within Afghanistan. Thus, for example, the arms embargo was upon the provision of arms and related *matériel*, expertise and assistance not only to Taliban-controlled territory in Afghanistan, but to the Taliban, Bin Laden, Al Qaida and their associates, no matter where they might be located.

In January 2003, the Council adopted resolution 1455 (2003), by which it decided to improve the implementation of the sanctions.²⁸ The scope of the sanctions remained the same, however.

16.4 The administration, monitoring and enforcement of the Taliban/Al Qaida sanctions régime

The Security Council has created three subsidiary entities to facilitate the implementation of the Afghanistan/Taliban/Al Qaida sanctions régime: a sanctions committee, a Committee of Experts and a Monitoring Mechanism. In addition, the Council has bestowed various responsibilities upon the Secretary-General related to scrutinising the

²⁵ S/RES/1390 (16 January 2002), operative paragraph 2(a). The Council subsequently permitted exemptions from these financial sanctions where such funds, assets or resources were necessary for “basic” or “extraordinary” expenses: S/RES/1452 (20 December 2002), operative paragraph 1. It also qualified that States might allow for frozen accounts to earn interest and to receive outstanding payments owed under contracts, agreements or obligations that had arisen prior to the application of sanctions: S/RES/1452 (20 December 2002), operative paragraph 2.

²⁶ S/RES/1390 (16 January 2002), operative paragraph 2(b). An exemption was provided from this prohibition where necessary for the fulfilment of a judicial process or as otherwise approved by the Taliban/Al Qaida sanctions committee.

²⁷ S/RES/1390 (16 January 2002), operative paragraph 2(c).

²⁸ S/RES/1455 (17 January 2003).

implementation of sanctions, in particular by reporting on the humanitarian implications of the application of sanctions.

16.4.1 The Afghanistan/Taliban/Al Qaida Sanctions Committee

The Security Council established a Sanctions Committee in the same resolution which initiated the Afghanistan/Taliban/Al Qaida sanctions régime.²⁹ The Committee has been referred to by a number of names, including the “1267 Committee”, the “Afghanistan Committee” and the “Taliban/Al Qaida Committee”.

Establishment and mandate of the Taliban/Al Qaida Committee

In addition to being assigned the standard collection of sanctions committee tasks, the new committee was also requested to report on the humanitarian implications of the sanctions and to determine appropriate arrangements to improve monitoring of the implementation of the sanctions. The Committee’s tasks therefore included reporting to the Council on its work and with its observations and recommendations, and: (a) Seeking from all States information regarding the action they had taken to implement the sanctions;³⁰ (b) Considering information brought to its attention by States concerning sanctions violations and recommending appropriate measures in response thereto;³¹ (c) Making periodic reports to the Council on the impact of the sanctions, including their humanitarian implications;³² (d) Making periodic reports to the Council on information submitted to it regarding alleged violations of the sanctions, identifying where possible persons or entities reported to be

²⁹ S/RES/1267 (15 October 1999), operative paragraph 6.

³⁰ S/RES/1267 (15 October 1999), operative paragraph 6(a).

³¹ S/RES/1267 (15 October 1999), operative paragraph 6(b).

³² S/RES/1267 (15 October 1999), operative paragraph 6(c).

engaged in such violations;³³ (e) Designating the aircraft and funds or financial resources subject to the sanctions;³⁴ (f) Deciding upon requests for exemptions from the sanctions;³⁵ (g) Examining the reports and information submitted to it by States;³⁶ and (h) Determining appropriate arrangements to improve monitoring of the implementation of the sanctions.³⁷

The mandate of the 1267 Committee was subsequently modified in accordance with the modifications made to the scope of the Taliban/Al Qaida sanctions régime. Thus, in December 2000, with the adoption of resolution 1333 (2000), the Committee was requested: (a) To establish and maintain a list of all points of entry and landing for aircraft within the territory of Afghanistan under Taliban control;³⁸ (b) To establish and maintain a list of individuals and entities designated as being associated with Usama bin Laden;³⁹ (c) To decide upon requests for exemptions from the sanctions;⁴⁰ (d) To establish and maintain a list of approved organizations and governmental relief agencies which were providing humanitarian assistance to Afghanistan;⁴¹ (e) To make relevant information regarding implementation of the sanctions publicly available through appropriate media;⁴² (f) To consider a visit to countries in the region by the Chairman of the Committee to enhance the full and effective implementation of the sanctions;⁴³ and (g) To make periodic reports to the

³³ S/RES/1267 (15 October 1999), operative paragraph 6(d).

³⁴ S/RES/1267 (15 October 1999), operative paragraph 6(e).

³⁵ S/RES/1267 (15 October 1999), operative paragraph 6(f).

³⁶ S/RES/1267 (15 October 1999), operative paragraph 6(g).

³⁷ S/RES/1267 (15 October 1999), operative paragraph 12.

³⁸ S/RES/1333, operative paragraph 16(a).

³⁹ S/RES/1333 (19 December 2000), operative paragraph 16(b).

⁴⁰ S/RES/1333 (19 December 2000), operative paragraph 16(c).

⁴¹ S/RES/1333 (19 December 2000), operative paragraph 16(d). Organizations on the list could then be exempted from the aviation sanctions for activities involving the provision of humanitarian supplies, in accordance with operative paragraph 12 of the same resolution.

⁴² S/RES/1333 (19 December 2000), operative paragraph 16(e).

⁴³ S/RES/1333 (19 December 2000), operative paragraph 16(f).

Council on information submitted to it regarding possible violations of the sanctions and to make recommendations for strengthening the effectiveness of the sanctions.⁴⁴

In July 2001 the Council adopted resolution 1363 (2001), establishing a monitoring mechanism for Afghanistan.⁴⁵ At the same time, the Council also requested the Committee to report to it on the implementation of resolution 1363 (2001).⁴⁶ In January 2002, when it adopted resolution 1390 (2002), the Security Council requested the Committee to report on its work to the Council with its observations and recommendations and to undertake the following tasks: (a) To update regularly the list of individuals and groups associated with Usama Bin Laden, Al Qaida and the Taliban;⁴⁷ (b) To seek from States information regarding action taken to implement the sanctions and any further information the Committee may consider necessary;⁴⁸ (c) To make periodic reports to the Council on information submitted to it regarding the implementation of the sanctions;⁴⁹ (d) To promulgate guidelines and criteria necessary to facilitate the implementation of the sanctions;⁵⁰ (e) To make information it considers relevant, including the list referred to in paragraph 2 above, publicly available through appropriate media;⁵¹ and (f) To cooperate with other relevant Security Council Sanctions Committees and with the Committee established pursuant to paragraph 6 of its resolution 1373 (2001).⁵²

⁴⁴ S/RES/1333 (19 December 2000), operative paragraph 16(g).

⁴⁵ S/RES/1363 (30 July 2001), operative paragraph 3. For further details relating to the establishment and activities of the monitoring mechanism, see the discussion below.

⁴⁶ S/RES/1363 (30 July 2001), operative paragraph 6.

⁴⁷ S/RES/1390 (16 January 2002), operative paragraph 5(a).

⁴⁸ S/RES/1390 (16 January 2002), operative paragraph 5(b).

⁴⁹ S/RES/1390 (16 January 2002), operative paragraph 5(c).

⁵⁰ S/RES/1390 (16 January 2002), operative paragraph 5(d).

⁵¹ S/RES/1390 (16 January 2002), operative paragraph 5(e).

⁵² S/RES/1390 (16 January 2002), operative paragraph 5(f).

In resolution 1452 (2002), the Council also added the following additional tasks to the Committee's list of responsibilities: (a) To maintain a list of the States whose notifications of intent to take advantage of the exemption from the financial sanctions for basic expenses had not been rejected by it [the Committee];⁵³ and (b) To consider requests for exemptions for extraordinary expenses.⁵⁴

In resolution 1455 (2003), adopted in January 2003, the Security Council added the following responsibilities to the already significant list of tasks assigned to the Committee: (a) To communicate to Member States the list of individuals and groups associated with Usama Bin Laden, Al Qaida and the Taliban at least every three months;⁵⁵ (b) To consider a visit to selected countries by the Chairman of the Committee and/or Committee members to enhance the full and effective implementation of the sanctions;⁵⁶ and (c) To circulate a written assessment to the Council of actions taken by States to implement the sanctions.⁵⁷ In resolution 1455 (2003) the Council also requested that the Chairman of the Committee: (a) Report orally every 90 days on the work of the Committee and the Monitoring Group and on the reports received from States on steps taken to implement the sanctions;⁵⁸ and (b) Provide the Council by 1 August 2003 and by 15 December 2003 with detailed oral assessments of Member State implementation of the sanctions, with a view to recommending further measures for Council consideration to improve the sanctions.⁵⁹

Activities of the Afghanistan/Taliban/Al Qaida Committee

⁵³ S/RES/1452 (20 December 2002), operative paragraph 3(a).

⁵⁴ S/RES/1452 (20 December 2002), operative paragraph 3(b).

⁵⁵ S/RES/1455 (17 January 2003), operative paragraph 4.

⁵⁶ S/RES/1455 (17 January 2003), operative paragraph 11.

⁵⁷ S/RES/1455 (17 January 2003), operative paragraph 15.

⁵⁸ S/RES/1455 (17 January 2003), operative paragraph 9.

In the course of its activities, the 1267 committee has issued: four annual reports,⁶⁰ as well as various other reports pursuant to resolutions 1333 (2000), 1390 (2002) and 1455 (2003), listing submissions received from States concerning the steps they had taken to comply with the sanctions.⁶¹ The Committee's annual reports demonstrate a progressively more active agenda. In its first annual report the Committee provided no recommendations, simply reaffirming in its conclusions its commitment to working closely with other sections of the United Nations system, and expressing appreciation for the cooperation received from Member States, international organizations and the Secretariat.⁶² In its second annual report, the Committee again made no significant recommendations. It noted, however, that it had welcomed and endorsed the recommendations made to it by the Committee of Experts, which had led to the establishment of the Afghanistan monitoring mechanism.⁶³ In its third annual report, the Committee noted that the global character of its mandate, as modified by resolution 1390 (2002), provided both greater opportunities and greater challenges, as it sought to achieve its objectives.⁶⁴ The Committee described its list of individuals and entities belonging to or associated with the Taliban, Bin Laden and Al Qaida as a "critical tool" for

⁵⁹ S/RES/1455 (17 January 2003), operative paragraph 14.

⁶⁰ S/2000/1254 (29 December 2000), annex: *Report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Afghanistan* (hereafter "First report of the 1267 Committee"), containing a summary of the Committee's activities between its establishment in October 1999 and 28 December 2000]; S/2002/101 (5 February 2002), annex: *Report of the 1267 Committee for 2001*; S/2002/1423 (26 December 2002), annex: *Report of the 1267 Committee for 2002*; S/2004/281 (8 April 2004): *Report of the 1267 Committee for 2003*.

⁶¹ S/200/282 and Add.1 (4 April and 31 August 2000), annexes [listing reports received from States outlining measures taken to implement the sanctions outlined in resolution 1267 (1999)]; S/2001/326 and Add.1 (4 April and 21 November 2001), annexes [listing the reports received from States outlining measures taken to implement the sanctions outlined in resolution 1333 (2000)]; S/2002/736 (9 July 2002), annexes [listing the reports received from States outlining measures taken to implement the sanctions outlined in resolution 1390 (2002)].

⁶² *First report of the 1267 Committee*, above note 60, paragraphs 21-22.

⁶³ *Report of the 1267 Committee for 2001*, above note 60, paragraphs 22-23.

⁶⁴ *Report of the 1267 Committee for 2002*, above note 60, paragraph 43.

the effective implementation of the sanctions.⁶⁵ It was important that the list be constantly modified and updated, as well as widely disseminated, in order to serve as well as possible the objectives of the sanctions régime.⁶⁶ The Committee noted that the work of the Monitoring Group had become “indispensable” for the effective discharge of the Committee’s mandate,⁶⁷ but it stressed that in order to achieve fully the objectives of the Security Council in the application of the sanctions, there would also need to be increased interaction between the Committee, the Monitoring Group, and other bodies active in the “fight against terrorism” – both within and outside the United Nations system.⁶⁸

16.4.2 The Role of Secretary-General

When the Security Council established the Afghanistan/Taliban/Al Qaida sanctions régime, it requested the Secretary-General to report to it if the Taliban had complied with its obligations under the sanctions régime before 14 November 1999, in which case the Council might decide that the sanctions would not come into operation.⁶⁹ At the same time, the Council also requested the Secretary-General to provide all necessary assistance to the 1267 Committee.⁷⁰

In December 2000, the Security Council requested the Secretary-General: (a) To appoint the Committee of experts referred to below;⁷¹ (b) To consult with relevant Member States to put into effect the Afghanistan/Taliban/Al Qaida sanctions;⁷² (c) To report on the

⁶⁵ *Ibid*, paragraph 44.

⁶⁶ *Ibid*, paragraph 45.

⁶⁷ *Ibid*, paragraph 46.

⁶⁸ *Ibid*, paragraph 48.

⁶⁹ S/RES/1267 (15 October 1999), operative paragraph 3.

⁷⁰ S/RES/1267 (15 October 1999), operative paragraph 11.

⁷¹ S/RES/1333 (19 December 2000), operative paragraph 15(a).

⁷² S/RES/1333 (19 December 2000), operative paragraph 15(b).

implementation of the sanctions, assess problems in enforcement, make recommendations for strengthening sanctions enforcement, and evaluate the actions taken by the Taliban to comply with the aims of the sanctions;⁷³ and (d) To review the humanitarian implications of the sanctions and to report to the Council within 90 days with an assessment and recommendations, to report at regular intervals thereafter on humanitarian implications and to present a comprehensive report on the issue, including recommendations, no later than 30 days before the expiration of the measures imposed by resolution 1333 (2000).⁷⁴

In July 2001, the Council requested the Secretary-General to establish the Afghanistan/Taliban/Al Qaida monitoring mechanism.⁷⁵ At the same time, it also requested him to make the necessary arrangements to support the work of the monitoring mechanism, as an expense of the Organization and through a United Nations Trust Fund, and to keep the 1267 Committee informed of the financial arrangements supporting the mechanism.⁷⁶

In January 2002, the Council requested the Secretary-General to assign the Afghanistan/Taliban/Al Qaida Monitoring Group to monitor, for a period of twelve months, the implementation of the sanctions.⁷⁷ In January 2003, the Council requested the Secretary-General to reappoint experts to the Monitoring Group,⁷⁸ and to ensure that the Monitoring Group and the 1267 Committee and its Chairman had access territorial integrity sufficient expertise and resources to discharge their responsibilities.⁷⁹

⁷³ S/RES/1333 (19 December 2000), operative paragraph 15(c).

⁷⁴ S/RES/1333 (19 December 2000), operative paragraph 15(d).

⁷⁵ S/RES/1363 (30 July 2001), operative paragraph 3. For details relating to the monitoring mechanism, see below.

⁷⁶ S/RES/1363 (30 July 2001), operative paragraph 9.

⁷⁷ S/RES/1390 (16 January 2002), operative paragraph 9.

⁷⁸ S/RES/1455 (17 January 2003), operative paragraph 8.

⁷⁹ S/RES/1455 (17 January 2003), operative paragraph 10.

Activities relating to humanitarian implications of the sanctions

In 2001, the Secretary-General submitted four reports to the Council on the humanitarian implications of the sanctions.⁸⁰ In those reports, the Secretary-General noted that the humanitarian situation in Afghanistan was dire, with the health situation being among the worst in the world, refugees and displaced persons numbering over 2.6 million people, and a devastated economy.⁸¹ Although that situation could not be attributed to the sanctions, the direct impact of sanctions on the humanitarian situation in Afghanistan had been “limited but tangible”.⁸² The most direct impact of the sanctions had been upon the national airlines, Ariana Afghan Airlines, as the sanctions made it increasingly difficult for Ariana to carry out essential maintenance.⁸³ In addition, international civil aviation safety had been affected, as regional and international contacts between the Afghanistan civil aviation authorities and

⁸⁰ S/2001/241 (20 March 2001): *Report of the Secretary-General on the humanitarian implications of the measures imposed by Security Council resolutions 1267 (1999) and 1333 (2000) on Afghanistan*; S/2001/695 (13 July 2001): *Report of the Secretary-General on humanitarian implications of the measures imposed by Security Council resolutions 1267 (1999) and 1333 (2000) on Afghanistan*; S/2001/1086 (19 November 2001): *Report of the Secretary-General on the humanitarian implications of the measures imposed by Security Council resolutions 1267 (1999) and 1333 (2000) on Afghanistan*; S/2001/1215 (18 December 2001): *Report of the Secretary-General on the humanitarian implications of the measures imposed by Security Council resolutions 1267 (1999) and 1333 (2000) on Afghanistan*. It should be noted that the report of November 2001 (S/2001/1086) consisted of a short statement that it had not been possible to undertake the task of reporting on humanitarian implications due to the “precarious security situation in Afghanistan”. In his December report the Secretary-General also noted that due to developments in Afghanistan he was not in a position to report on the humanitarian implications of the sanctions. He did, however, outline some observations relating to the experience of monitoring the humanitarian implications of sanctions.

⁸¹ S/2001/241, *ibid*, paragraph 15.

⁸² S/2001/241, *ibid*, paragraph 16 [citing an earlier report, prepared by the United Nations Office for the Coordination of Humanitarian Affairs and submitted to the 1267 Committee in December 2000].

⁸³ S/2001/241, *ibid*, paragraphs 22-24; S/2001/695, above note 80, paragraphs 22-30 [containing a number of recommendations for potential action by the 1267 Committee, which aimed to ensure that Ariana could undertake basic maintenance of its fleet and provide training to its staff, provided that the International Air Transport Authority (IATA) had certified that such actions were indeed necessary for Ariana to meet safety requirements].

external bodies had been prohibited under the sanctions.⁸⁴ The application of the sanctions had also been accompanied by the devaluation of the Afghan currency (“the Afghani”), which had lost 18 per cent of its value relative to the US dollar from December 2000 to February 2001.⁸⁵ Although the currency subsequently stabilized, the initial devaluation potentially led to an initial deterioration in the humanitarian situation, as a result of decreased purchasing power.⁸⁶ The Secretary-General also warned that the Taliban authorities had engaged in a sustained campaign against the sanctions, blaming them for deteriorations in the humanitarian situation.⁸⁷ This had had a flow-on effect of its own, making the operating environment for international humanitarian organizations difficult.⁸⁸ On a more positive note, the Secretary-General noted that, on the whole, the mechanism for providing various humanitarian exemptions from the sanctions was operating smoothly.⁸⁹

In his final report on the humanitarian implications of sanctions, the Secretary-General observed that the process of reviewing the impact of sanctions had resulted in useful reflections and discussions within the monitoring mechanism, the 1267 Committee and the Security Council on the implications of sanctions. He suggested that the Security Council might wish to consider establishing a similar procedure for future sanctions régimes, in order

⁸⁴ The report noted that the 1267 Committee had refused requests from the Afghan civil aviation ministry to fly to Pakistan for technical meetings: S/2001/241, *ibid*, paragraph 25.

⁸⁵ *Ibid*, paragraphs 27-28. The report noted that currency traders had marked the Afghani down as it had become clear that further sanctions were going to be imposed.

⁸⁶ S/2001/241, *ibid*, paragraph 28 [noting the potential link between the devaluation of the currency and a deterioration in the humanitarian situation] S/2001/695, above note 80, paragraph 35 [noting that the Afghani had stabilized].

⁸⁷ S/2001/241, *ibid*, paragraph 34; S/2001/695, paragraph 62; S/2001/1215, above note 80, paragraph 8.

⁸⁸ S/2001/1215, *ibid*, paragraph 6.

⁸⁹ S/2001/241, paragraphs 33, 36; S/2001/695, paragraph 54; S/2001/1215, paragraph 7.

to monitor and assess potential unintended consequences on the civilian population of targeted countries.⁹⁰

16.4.3 States

The Security Council has requested, called upon or urged States to undertake a range of activities connected to the implementation, monitoring and enforcement of the 1267 sanctions régime. The Council has thus: urged all States to cooperate with efforts to ensure that Usama Bin Laden was turned over to authorities in a country where he had been indicted, or to a country where he would be brought to justice;⁹¹ called upon all States to act in accordance with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations;⁹² called upon States to bring proceedings against persons and entities within their jurisdiction that violated the sanctions and to impose appropriate penalties;⁹³ called upon all States to cooperate fully with the 1267 Committee, including by supplying information it sought;⁹⁴ requested all States to report to the 1267 Committee on steps taken to implement the sanctions;⁹⁵ urged all States maintaining diplomatic relations with the Taliban to reduce significantly the number and level of the staff at Taliban missions and posts and to restrict or control the movement within their territory of all remaining staff;⁹⁶ urged

⁹⁰ S/2001/1215, *ibid*, paragraph 9.

⁹¹ S/RES/1267 (15 October 1999), operative paragraph 5.

⁹² S/RES/1267 (15 October 1999), operative paragraph 7; S/RES/1333 (19 December 2000), operative paragraph 17.

⁹³ S/RES/1267 (15 October 1999), operative paragraph 8; S/RES/1333 (19 December 2000), operative paragraph 18.

⁹⁴ S/RES/1267 (15 October 1999), operative paragraph 9; S/RES/1333 (19 December 2000), operative paragraph 19; S/RES/1390 (16 January 2002), operative paragraph 7; S/RES/1455 (17 January 2003), operative paragraph 7.

⁹⁵ S/RES/1267 (15 October 1999), operative paragraph 10; S/RES/1333 (19 December 2000), operative paragraph 20; S/RES/1390 (16 January 2002), operative paragraph 6.

⁹⁶ S/RES/1333 (19 December 2000), operative paragraph 7.

States to take steps to restrict the entry into or transit through their territory of senior Taliban officials;⁹⁷ called upon all States to cooperate with the monitoring mechanism;⁹⁸ urged all States to take immediate steps to enforce and strengthen, through legislative enactments or administrative measures, the measures imposed under their domestic laws or regulations against their nationals and other individuals or entities operating on their territory, to prevent and punish violations of the sanctions and to inform the 1267 Committee of the adoption of such measures, and invited States to report the results of all related investigations or enforcement actions to the Committee;⁹⁹ urged all States to cooperate fully with the Monitoring Group;¹⁰⁰ and called on all States to submit an updated report on steps taken to implement the sanctions and on all related investigations and enforcement action, including a comprehensive summary of frozen assets of listed individuals and entities within Member State territories.¹⁰¹

16.4.4 The Afghanistan/Taliban/Al Qaida Committee of Experts

In December 2000, when it adopted resolution 1333 (2000), the Council requested the Secretary-General to appoint a committee of experts to make recommendations on improving the monitoring of the Afghanistan/Taliban/Al Qaida sanctions.¹⁰² The Committee of Experts was requested to report to the Council within sixty days on how to monitor the

⁹⁷ S/RES/1333 (19 December 2000), operative paragraph 14. The Council noted, however, that this request did not apply where officials were travelling for humanitarian purposes, including religious obligations such as the performance of the Hajj, or where it promoted the peaceful resolution of the conflict in Afghanistan or compliance with the objectives of the sanctions régime.

⁹⁸ S/RES/1363 (30 July 2001), operative paragraph 7.

⁹⁹ S/RES/1363 (30 July 2001), operative paragraph 8; S/RES/1390 (16 January 2002), operative paragraph 8; S/RES/1455 (17 January 2003), operative paragraph 5.

¹⁰⁰ S/RES/1390 (16 January 2002), operative paragraph 7; S/RES/1455 (17 January 2003), operative paragraph 7.

¹⁰¹ S/RES/1455 (17 January 2003), operative paragraph 6.

arms embargo against the Taliban and the closure of terrorist training camps.¹⁰³ In its report, the Committee of Experts outlined the activities it had taken to fulfil its mandate and made a number of key recommendations.¹⁰⁴

As part of its operations, the Committee of Experts consulted with a range of actors, including representatives of the States sharing a border with Afghanistan and of two States considered to have a major strategic interest in events in Afghanistan – the United States and the Russian Federation.¹⁰⁵ The Committee concluded that the arms embargo and the closure of the terrorist training camps could best be monitored by strengthening mechanisms that were already in place in the six countries bordering Afghanistan.¹⁰⁶ It therefore recommended that the Council establish an office for sanctions monitoring and coordination, consisting of a Headquarters team and a number of Sanctions Enforcement Support Teams, each working alongside the border control services in the countries neighbouring Afghanistan.¹⁰⁷ Among the Committee's other recommendations were: that the Headquarters Office be located in Vienna; that the Sanctions Enforcement Support Teams be based with existing United Nations offices in the countries neighbouring Afghanistan; that the Council consider specifying a prohibition against aircraft turbine fuel and fluids and lubricants for use in armoured vehicles, as part of the arms embargo.¹⁰⁸

¹⁰² S/RES/1333 (19 December 2000), operative paragraph 15.

¹⁰³ S/RES/1333 (19 December 2000), operative paragraph 15(a).

¹⁰⁴ S/2001/511 (22 May 2001): Letter dated 21 May from the Secretary-General addressed to the President of the Security Council, enclosure [containing the *Report of the Committee of Experts appointed pursuant to Security Council resolution 1333 (2000), paragraph 15 (a), regarding monitoring of the arms embargo against the Taliban and the closure of terrorist training camps in the Taliban-held areas of Afghanistan*].

¹⁰⁵ *Ibid*, paragraphs 11-19 [listing the range of actors with which the Committee of Experts met]

¹⁰⁶ *Ibid*, paragraph 94.

¹⁰⁷ *Ibid*, paragraph 96.

¹⁰⁸ *Ibid*, paragraphs 97-102.

16.4.5 The Afghanistan/Taliban/Al Qaida Monitoring Group

In July 2001, after considering the report of the Committee of Experts, the Security Council requested the Secretary-General to establish a monitoring mechanism, whose mandate would extend for the remaining period of the sanctions which had been imposed under resolution 1333 (2000).¹⁰⁹ The mechanism would: (a) Monitor the implementation of the sanctions;¹¹⁰ (b) Offer assistance to States bordering the territory of Afghanistan under Taliban control, and other States as appropriate, to increase their capacity regarding the implementation of the sanctions;¹¹¹ and (c) Collate, assess, verify, report and make recommendations on information regarding violations of the sanctions.¹¹² The monitoring mechanism would consist of two bodies: a Monitoring Group and a Sanctions Enforcement Support Team.¹¹³

Following the establishment of the monitoring mechanism, the Monitoring Group's mandate was extended for two further periods of twelve months.¹¹⁴ Its final mandate expired in January 2004, when it was replaced by the Analytical Support and Sanctions Monitoring

¹⁰⁹ S/RES/1363 (30 July 2001), operative paragraph 3.

¹¹⁰ S/RES/1363 (30 July 2001), operative paragraph 3(a).

¹¹¹ S/RES/1363 (30 July 2001), operative paragraph 3(b).

¹¹² S/RES/1363 (30 July 2001), operative paragraph 3(c).

¹¹³ S/RES/1363 (30 July 2001), operative paragraph 4. The Monitoring Group would be based in New York and would consist of up to five experts. Its mandate would be to monitor the implementation of the sanctions, including in the fields of arms embargoes, counter-terrorism and related legislation, as well as money laundering, financial transactions and drug trafficking: S/RES/1363 (30 July 2001), operative paragraph 4(a). The Sanctions Enforcement Support Team would be located in the States neighbouring Afghanistan and would consist of up to fifteen members with expertise in areas such as customs, border security and counter-terrorism: S/RES/1363 (30 July 2001), operative paragraph 4(b). The Sanctions Enforcement Support Team would report at least once a month to the Monitoring Group, and the Monitoring Group would report to the 1267 Committee: S/RES/1363 (30 July 2001), operative paragraph 5.

¹¹⁴ S/RES/1390 (16 January 2002), operative paragraphs 9, 10; S/RES/1455 (17 January 2003), operative paragraphs 8, 12, 13.

Team (“the 1526 Monitoring Team”).¹¹⁵ The Sanctions Enforcement Support Team was never actually deployed, however, due to the complex situation that developed on the ground in Afghanistan after 11 September 2001.

As part of its reporting responsibilities, the Monitoring Group submitted six reports.¹¹⁶ As the reports have all been issued subsequent to the overthrow of the Taliban in late-2001, they address a situation that had changed substantially since the initial application of sanctions. The reports contain detailed accounts of the activities of the Monitoring Group during the reporting periods, as well as observations and recommendations for improving the implementation of the sanctions.

In the report circulated by the Monitoring Group in January 2002, the Group’s major recommendations were: (a) That the arms embargo be maintained against the Taliban, Al Qaida and their sympathizers and that consideration be given to an arms embargo upon the whole of Afghanistan;¹¹⁷ (b) That the financial sanctions against individuals and entities associated with the Taliban, Al Qaida and Usama Bin Laden be maintained and monitored for full compliance;¹¹⁸ (c) That an effective border control service be implemented by the Afghan authorities as a matter of priority;¹¹⁹ (d) That the Sanctions Enforcement Support

¹¹⁵ For discussion of the 1526 Monitoring Team, see below.

¹¹⁶ S/2002/65 (15 January 2002), annex: *First Report of the Monitoring Group on Afghanistan Established Pursuant to Security Council Resolution 1363 (2001)*; S/2002/541 (15 May 2002), enclosure: *Report of the Monitoring Group pursuant to Resolution 1390 (2002)*; S/2002/1050 (17 December 2002), enclosure: *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*; S/2002/1338 (17 December 2002), enclosure: *Third report of the Monitoring Group Pursuant to Resolution 1390 (2002)*; S/2003/669 (8 July 2003), enclosure: *Report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) and extended by resolutions 1390 (2002) and 1455 (2003)*; S/2003/1070 (2 December 2003), enclosure: *Second Report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) and extended by resolutions 1390 (2002) and 1455 (2003)*.

¹¹⁷ *First Report of the Monitoring Group on Afghanistan*, *ibid*, paragraphs 46-47.

¹¹⁸ *Ibid*, paragraph 53.

¹¹⁹ *Ibid*, paragraph 49.

Teams, which had not been deployed due to the complex situation on the ground subsequent to September 11 2001, should be maintained, but that their name should be changed to Monitoring and Advisory Teams and that experts with skills and expertise in financial investigations should be added to those teams;¹²⁰ (e) That there be international verification of the closure of drug production facilities and terrorist training camps and facilities in Afghanistan.¹²¹ Many of these recommendations were taken up and acted upon by the Security Council in resolution 1390 (2002).

In its reports issued pursuant to resolutions 1390 (2002) and 1455 (2003), the Monitoring Group has arranged its recommendations into five groups: i) Recommendations for improving the operation of the consolidated list; ii) Recommendations for improving the implementation of the financial sanctions; iii) Recommendations for improving the implementation of the arms sanctions; iv) Recommendations for improving the implementation of the travel sanctions; and v) Recommendations for increasing the number of reports received from States on measures taken to implement the sanctions.

i. Recommendations for improving the operation of the consolidated list

Among its suggestions on improving the operation of the consolidated list, the Monitoring Group has recommended: (a) That the list of individuals and entities associated with the Taliban, Al Qaida and Bin Laden should contain the minimum criteria needed to enhance implementation. It should therefore contain names according to their “correct cultural construction” so that they can be recognized by implementing authorities, it should contain as many “identifiers” as possible, to avoid potential cases of mistaken identity, it

¹²⁰ *Ibid*, paragraphs 50, 54.

¹²¹ *Ibid*, paragraphs 51, 55.

should be produced in all of the official languages of the United Nations, and it should be disseminated as widely as possible to ensure implementation;¹²² (b) That the United Nations consolidated list should be used by all States as an authoritative reference for the implementation of sanctions against the Taliban, Al Qaida and Usama Bin Laden and their associates; (c) That the list be updated regularly, that States submit to the 1267 Committee for possible addition to the list the names and identifying information of all persons believed to be members of or associated with Al Qaida or the Taliban; (d) That States assist the 1267 Committee in better identifying individuals or entities already on the list, providing confirmation of details such as date and place of birth, passport numbers for all known nationalities and physical description; (e) That the 1267 Committee establish a mechanism capable of responding immediately to inquiries concerning the identification of persons being detained as suspected members or associates of Al Qaida or the Taliban;¹²³ (f) That the list be issued in a revised format; that all individuals known to have attended Al Qaida training camps must be considered suspected terrorists and their names should be submitted for designation on the list;¹²⁴ and (g) That States keep the list up to date.¹²⁵

ii. Recommendations for improving implementation of the financial sanctions

Among its suggestions for improving the implementation of the financial sanctions, the Monitoring Group has recommended: (a) That States should become parties to the

¹²² *Report of the Monitoring Group pursuant to Resolution 1390 (2002)*, above note 116, paragraphs 68-73; *Report of the Monitoring Group Pursuant to resolution 1455 (2003)*, above note 116, paragraph 164.

¹²³ *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 116, paragraphs 126-133.

¹²⁴ *Third report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 116, paragraphs 95-98; *Report of the Monitoring Group Pursuant to resolution 1455 (2003)*, above note 116, paragraph 165.

International Convention for the Suppression of the Financing of Terrorism;¹²⁶ (b) That States involved in the trade of rough diamonds should participate in the Kimberley Process;¹²⁷ (c) That States should assist each other as much as possible in the investigation and sharing of intelligence concerning individuals believed to be members or associates of Al Qaida or the Taliban, in order to ensure that the application and maintenance of financial sanctions is justified; (d) That bank secrecy rules should not be an obstacle to the provision to the Monitoring Group of information requested by it concerning individuals and entities alleged to have links to Al Qaida; (e) That the 1267 Committee establish procedures regarding the possible granting of humanitarian exceptions to the sanctions; (f) That States should review their laws and procedures regarding oversight of charities, in order to ensure that they are not used to funnel funds to individuals and entities associated with Al Qaida and the Taliban; (g) That banking institutions submit to appropriate national authorities reports on suspicious transactions; (h) That an international organization be granted responsibility for working with States to ensure that *hawala* and other alternative systems for the transfer of money are not exploited or misused by terrorists;¹²⁸ (i) That assets belonging to individuals and entities on the list should not be released without prior approval from the 1267 Committee; and (j) That Member States should be encouraged to introduce mechanisms to

¹²⁵ *Report of the Monitoring Group Pursuant to resolution 1455 (2003)*, above note 116, paragraph 166.

¹²⁶ *Report of the Monitoring Group pursuant to Resolution 1390 (2002)*, above note 116, paragraph 74; *Report of the Monitoring Group Pursuant to resolution 1455 (2003)*, above note 116, paragraph 167.

¹²⁷ *Report of the Monitoring Group pursuant to Resolution 1390 (2002)*, above note 116, paragraph 75.

¹²⁸ *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 116, paragraphs 134-143.

enable electronic transfers, particularly international ones, to be monitored for suspicious activity.¹²⁹

iii. Recommendations for improving implementation of the arms sanctions

Among its suggestions for improving the implementation of the arms sanctions, the Monitoring Group has recommended: (a) That arms-producing States should become members of the Wassenaar Arrangement, work towards the standardization of “end-user” certificates, and register and license all nationals operating as arms brokers or dealers;¹³⁰ (b) That States should take steps to require the registration of all arms brokers dealing from their territories, to criminalize the operation of non-registered arms brokers, and to ensure the strict use of end-user certificates in any transactions involving the provision of arms and related *matériel*;¹³¹ (c) That all Member States should be encouraged to become party to the 1991 Montreal Convention and the 1997 International Convention for the Suppression of Terrorist Bombings; (d) That Member States be encouraged to participate in the Container Security Initiative; and (e) Member States should be encouraged to adopt the recommendations made by the Secretary-General in his report dated 20 September 2002 on small arms.¹³²

iv. Recommendations for improving implementation of the travel sanctions

¹²⁹ *Third report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 116, paragraphs 99-102.

¹³⁰ *Report of the Monitoring Group pursuant to Resolution 1390 (2002)*, above note 116, paragraphs 76-78.

¹³¹ *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 116, paragraphs 146-151.

¹³² *Third report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 116, paragraphs 105-107. For the report of the Secretary-General on small arms, see: S/2002/1053 (20 September 2002): *Report of the Secretary-General on small arms*.

Among its suggestions on improving the implementation of the travel sanctions, the Monitoring Group has recommended: (a) That States should ensure that their border control officials are given adequate resources, training and technology to improve their ability to detect falsified documents; and (b) That the 1267 Committee issue guidelines to States on action to be taken in the event that a designated individual attempts to enter or transit their territory;¹³³ (c) That the 1267 Committee consider all individuals on the consolidated list to be actual or suspected Al Qaida terrorists, so that Member States can detain, prosecute or extradite them to another country that has issued a warrant or return them for detention in their country of origin; and (d) That Member States ensure that they put in place appropriate measures to comply fully with the travel sanctions.¹³⁴

v. Recommendation for increasing the number of reports from States

On the subject of increasing the number of reports received from States on measures taken to implement the sanctions, the Monitoring Group has recommended that the 1267 Committee encourage those States which had not yet complied with their obligation to submit such reports to do so.¹³⁵

¹³³ *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 116, paragraphs 144-145.

¹³⁴ *Third report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 116, paragraphs 103-104.

¹³⁵ *Second report of the Monitoring Group Pursuant to Resolution 1390 (2002)*, above note 116, paragraphs 152-153; *Report of the Monitoring Group Pursuant to resolution 1455 (2003)*, above note 116, paragraph 163.

16.4.6 The Analytical Support and Sanctions Monitoring Team (“the 1526 Monitoring Team”)

In January 2004, the Council decided to establish for a period of eighteen months an Analytical Support and Sanctions Monitoring Team.¹³⁶ The mandate of “the 1526 Monitoring Team”, which would comprise up to eight experts, included: (a) submitting written reports to the 1267 Committee on the implementation of the Taliban/Al Qaida sanctions, including concrete recommendations;¹³⁷ (b) analysing reports submitted by States pursuant to resolution 1455 (2003);¹³⁸ (c) facilitating areas of convergence between the 1267 Committee and the Counter-Terrorism Committee;¹³⁹ (d) reporting to the 1267 Committee on a regular basis;¹⁴⁰ and (e) assisting the 1267 Committee in preparing its oral and written reports to the Council.¹⁴¹ The 1526 Monitoring Team was due to submit its first report in July 2004.

16.5 Notable aspects of the Taliban/Al Qaida sanctions régime

Among the more notable aspects of the Afghanistan/Taliban/Al Qaida sanctions régime are the manner in which the sanctions are no longer linked to a particular geographic territory, the use of a time limit for one period of the régime, and the incorporation into the sanctions régime of consideration of the humanitarian implications of the sanctions. Perhaps the most notable aspect of the Afghanistan/Taliban/Al Qaida sanctions régime is the manner in which its initial geographic target, of entities and individuals operating within the territory of

¹³⁶ S/RES/1526 (30 January 2004), operative paragraph 6.

¹³⁷ S/RES/1526 (30 January 2004), operative paragraph 7.

¹³⁸ S/RES/1526 (30 January 2004), Annex.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

Afghanistan, expanded to incorporate entities wherever they were, without the necessity of any connection with the territory of Afghanistan.¹⁴² Although the imposition of other sanction régimes – indeed of most sanctions régimes – had carried consequences beyond the geographical territory of the target,¹⁴³ never before had the Council imposed a sanctions régime without there being some nexus to a geographical centre for the activities of a targeted entity.

The employment of both a time-delay and a time-limit was also a notable development in the Council's sanctioning practice. In respect of time-delays, the Council provided for a one-month time-delay in respect of the initial sanctions against the Taliban and in respect of the first set of modified sanctions against the Taliban, Usama Bin Laden and Al Qaida.¹⁴⁴ In respect of the time-limit, the Council followed the precedents established in the sanctions régimes against Ethiopia and Eritrea and Sierra Leone by deciding in December 2000 that the additional measures against the Taliban would terminate after twelve months, unless it (the Council) were to decide otherwise.¹⁴⁵ In its subsequent

¹⁴² Even before the Security Council dropped the geographical nexus Afghanistan, the question of the territory to which the sanctions applied had been difficult to determine at a given time, as the territories controlled by the Taliban changed so rapidly and continually: see S/2001/1226 (20 December 2001): *Letter dated 14 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Afghanistan addressed to the President of the Security Council*. This issue has also arisen, however, in respect of other sanctions régimes targeting non-State actors, such as the UNITA, Rwanda and Sierra Leone sanctions régimes.

¹⁴³ There are many examples of this, such as the freezing of overseas assets belonging to targets such as Iraq, the Libyan Arab Jamahiriya, the Federal Republic of Yugoslavia (Serbia-Montenegro) and UNITA.

¹⁴⁴ S/RES/1267 (15 October 1999), operative paragraph 3 (providing that the initial sanctions would enter into force on 14 November 1999); S/RES/1333 (19 December 2000), operative paragraph 22 (providing that the modified sanctions would enter into force one month later). In subsequent modifications to the sanctions régime, however, the Council provided that the additional sanctions were to come into effect immediately. See, e.g., S/RES/1390 (16 January 2002), operative paragraphs 1, 2.

¹⁴⁵ S/RES/1333 (19 December 2000), operative paragraph 23.

resolutions, however, the Council did not incorporate such time-limits.¹⁴⁶ Moreover, in resolutions 1390 (2002) and 1455 (2003), the Council failed to articulate explicit objectives for the sanctions, thus making it unclear what conditions would need to be fulfilled by those targeted before the sanctions would be terminated.

From the time it initiated the Afghanistan/Taliban/Al Qaida sanctions régime, the Security Council has been mindful of the humanitarian implications of the sanctions. The Council included as one of the 1267 Committee's initial responsibilities the task of reporting on the humanitarian implications of the sanctions.¹⁴⁷ In its presidential statement of 7 April 2000, the Council underlined that sanctions were not aimed at the Afghan people, reaffirmed its decision to assess the humanitarian impact of the sanctions, and encouraged the 1267 Committee to report in that respect as soon as possible.¹⁴⁸ In resolution 1333 (2000), the Council took a number of steps to ensure that the issue of the humanitarian impact of the sanctions was being addressed adequately. Thus, the Council reaffirmed the necessity for sanctions to contain adequate and effective exemptions to avoid adverse humanitarian consequences on the people of Afghanistan, and for them to be structured in a way that would not impede the provision of international humanitarian assistance.¹⁴⁹ The Council also requested the Secretary-General to report on the humanitarian implications of the

¹⁴⁶ See, e.g., S/RES/1390 (16 January 2002), operative paragraph 3; S/RES/1455 (17 January 2003), operative paragraphs 1, 2.

¹⁴⁷ S/RES/1267 (15 October 1999), operative paragraph 6(c). The 1267 Committee in fact included a section on the humanitarian implications of the sanctions in its annual reports for 2001 and 2002: see, e.g., S/2002/101, paragraphs 28-31; S/2002/1423, paragraph 41.

¹⁴⁸ S/PRST/2000/12 (7 April 2000). For the Committee's action on this question, see note 147, *ibid.*

¹⁴⁹ S/RES/1333 (19 December 2000), preambular paragraph 16.

sanctions,¹⁵⁰ and it noted that, in considering the imposition of additional measures to achieve the goals of the sanctions régime, it would take into account the Secretary-General's impact assessment with a view to enhancing the effectiveness of the sanctions and avoiding humanitarian consequences.¹⁵¹

With the adoption of resolution 1390 (2002), however, the consideration of humanitarian implications of the sanctions appeared to have become less of a priority, however, as the Council did not incorporate a request for reporting on the humanitarian implications of sanctions in either resolution 1390 (2002) or resolution 1455 (2003). It is noteworthy, however, that both the 1267 Committee and the Monitoring Group have recently reported on humanitarian complications arising from the application of the sanctions.¹⁵² As a result of these concerns, the Council adopted resolution 1452 (2003), by

¹⁵⁰ S/RES/1333 (19 December 2000), operative paragraph 15(d). For further details relating to this, see the section above on the responsibilities of the Secretary-General under the sanctions régime.

¹⁵¹ S/RES/1333 (19 December 2000), operative paragraph 25.

¹⁵² See, e.g., S/2002/1050, paragraph 42 [noting that legal challenges were being made by individuals on the list, arguing that they should be granted access to frozen funds necessary for subsistence], paragraph 136 [recommending that the 1267 Committee should establish procedures regarding the possible granting of humanitarian exceptions to the financial sanctions].

which it provided for the possibility of exemptions from the financial sanctions for “basic” or “extraordinary” expenses.¹⁵³

¹⁵³ S/RES/1452 (20 December 2002), operative paragraph 1.

17. The Ethiopia and Eritrea sanctions régime

The Security Council imposed sanctions against both Ethiopia and Eritrea in May 2000, in an attempt to induce them to cease hostilities and engage in a meaningful peace process. The sanctions, which were imposed for an initial period of twelve months, consisted of an arms embargo. The sanctions terminated at the end of the twelve-month period, when the Council decided not to renew the régime.

17.1 The constitutional basis for imposing sanctions against Ethiopia and Eritrea

In late-January 1999, the Security Council expressed grave concern at escalating arms build-up that was occurring on both sides of the border between Eritrea and Ethiopia.¹ At the time, the Council also expressed its strong support for the mediation efforts that had been undertaken by the Organization of African Unity (OAU), and in particular for the Framework Agreement which had been approved by the OAU's Mechanism for Conflict Prevention, Management, and Resolution in December 1998.² Two weeks later, after conflict broke out between the two countries, the Security Council stressed that the situation constituted a threat to peace and security³ and demanded an immediate halt to hostilities.⁴ The Council also urged all States to end sales of arms to both Ethiopia and Eritrea.⁵

¹ S/RES/1226 (29 January 1999), preambular paragraph 2.

² S/RES/1226 (29 January 1999), operative paragraph 1. For the text of the Framework Agreement, see: S/1998/1223 (28 December 1998), *Letter dated 24 December 1998 from the representative of Ethiopia addressed to the President of the Security Council*, annex.

³ S/RES/1227 (10 February 1999), preambular paragraph 4.

⁴ S/RES/1227 (10 February 1999), operative paragraph 2.

⁵ S/RES/1227 (10 February 1999), operative paragraph 7.

In May 2000, after a fresh outbreak of hostilities between Ethiopia and Eritrea, the Council adopted resolution 1297 (2000), in which it noted that it was deeply disturbed by the renewed hostilities,⁶ and stressed that the situation constituted a threat to peace and security.⁷ The Council demanded that both parties immediately cease all military actions and refrain from the further use of force.⁸ It further demanded that the parties resume substantive peace talks, under OAU auspices, on the basis of documents which had served as the basis for earlier negotiations.⁹ The Council also warned that, if the hostilities did not cease, it would meet again in 72 hours to take steps to ensure that the parties complied with its demands.¹⁰

Five days later, as hostilities were continuing, the Council adopted resolution 1298 (2000), imposing sanctions against both Ethiopia and Eritrea. In that resolution, the Council determined that the situation between Ethiopia and Eritrea constituted a threat to regional peace and security¹¹ and, acting under Chapter VII,¹² imposed an arms embargo against both Eritrea and Ethiopia.¹³ The Council also invoked Chapter VII of the Charter in a subsequent resolution related to the sanctions régime.¹⁴

⁶ S/RES/1297 (12 May 2000), operative paragraph 2.

⁷ S/RES/1297 (12 May 2000), preambular paragraph 9.

⁸ S/RES/1297 (12 May 2000), operative paragraph .

⁹ S/RES/1297 (12 May 2000), operative paragraph .

¹⁰ S/RES/1297 (12 May 2000), operative paragraph .

¹¹ S/RES/1298 (17 May 2000), preambular paragraph 13.

¹² S/RES/1298 (17 May 2000), preambular paragraph 14.

¹³ S/RES/1298 (17 May 2000), operative paragraph 6.

¹⁴ S/RES/1320 (15 September 2000), operative paragraph 10.

17.2 The objective(s) of the Ethiopia/Eritrea sanctions régime

The overall objective of the sanctions against Ethiopia and Eritrea was to bring about a peaceful, definitive settlement to the conflict between the two countries.¹⁵ The specific objectives of the Ethiopia/Eritrea sanctions régime were: that both parties cease military action immediately and refrain from the further use of force;¹⁶ that the parties withdraw their forces from military engagement and take no action that would aggravate tensions;¹⁷ and that the parties reconvene substantive talks aimed at achieving a definitive peaceful settlement of the conflict.¹⁸

17.3 The scope of the Ethiopia/Eritrea sanctions régime

The Ethiopia/Eritrea sanctions consisted of an arms embargo against the territories of both those countries. More specifically, the Council required all States to prevent (a) the sale or supply to Eritrea and Ethiopia of arms and related *matériel*;¹⁹ and (b) the provision to Eritrea and Ethiopia of technical assistance or training related to the provision, manufacture, maintenance or use of arms and related *matériel*.²⁰ Although the Council outlined a number of exemptions from the arms embargo,²¹ the scope of the measures applied remained unchanged for the duration of the sanctions régime.

¹⁵ S/RES/1298 (17 May 2000), operative paragraph 17.

¹⁶ S/RES/1298 (17 May 2000), operative paragraph 2.

¹⁷ S/RES/1298 (17 May 2000), operative paragraph 3.

¹⁸ S/RES/1298 (17 May 2000), operative paragraph 4. The Security Council stipulated that such talks should be carried out under OAU auspices, on the basis of the "Framework Agreement" and other arrangements suggested by the OAU as recorded in a *Communiqué* issued by the OAU current Chairman on 5 May 2000: S/2000/394,

¹⁹ S/RES/1298 (17 May 2000), operative paragraph 6(a).

²⁰ S/RES/1298 (17 May 2000), operative paragraph 6(b).

²¹ See, e.g., S/RES/1298 (17 May 2000), operative paragraph 7 [exempting from the sanctions régime supplies of non-lethal military equipment intended solely for humanitarian use, as approved in advance by the Committee]; S/RES/1312 (31 July 2000), operative paragraph 5 [exempting from the sanctions régime equipment and related *matériel* for the use of the United

17.4 The administration, monitoring and enforcement of the Ethiopia/Eritrea sanctions régime

In order to facilitate the administration, implementation and enforcement of the sanctions against Ethiopia and Eritrea, the Security Council bestowed responsibilities upon both the Secretary-General and a Sanctions Committee.

17.4.1 The Secretary-General

When the Council established the sanctions régime, it requested the Secretary-General to undertake the following tasks: (a) To provide the necessary assistance to the Ethiopia and Eritrea Sanctions Committee;²² (b) To receive reports by States on steps taken to implement the sanctions;²³ (c) To report to the Council within fifteen days, and then every sixty days from the establishment of the sanctions régime, on the steps taken by Ethiopia and Eritrea to comply with the objectives of the sanctions régime;²⁴ and (d) To report to the Council in the event that there were a peaceful, definitive settlement of the conflict, in which case the sanctions would be terminated.²⁵

Nations Mine Action Service, as well as the provision of related technical assistance and training by that Service]; S/RES/1320 (15 September 2000), operative paragraph 10 [exempting from the sanctions régime arms and related *matériel* for the sole use in Ethiopia or Eritrea of the United Nations, as well as equipment and related *matériel*, including technical assistance and training, for use solely for demining within Ethiopia or Eritrea under the auspices of the United Nations Mine Action Service].

²² S/RES/1298 (17 May 2000), operative paragraph 10.

²³ S/RES/1298 (17 May 2000), operative paragraph 11. Although the Secretary-General received these reports, it was the 1298 Committee that submitted a report to the Council listing the reports received from States: see S/2001/39 (12 January 2001), annex: *Report of the Security Council Committee established pursuant to resolution 1298 (2000)* [containing a report pursuant to paragraph 11 of resolution 1298 (2000), listing the reports it had received from States detailing the measures they had taken to implement the sanctions].

²⁴ S/RES/1298 (17 May 2000), operative paragraph 15.

²⁵ S/RES/1298 (17 May 2000), operative paragraph 17.

17.4.2 The Ethiopia and Eritrea Sanctions Committee

When the Security Council initiated the Ethiopia and Eritrea sanctions régime, it also established, in accordance with rule 28 of its provisional rules of procedure, a Sanctions Committee.²⁶ The Committee (the “1298 Committee” or the “Ethiopia/Eritrea Committee”) was to report to the Council on its work and with its observations and recommendations, and regional organization undertake the following responsibilities: (a) Seeking from all States information regarding the action they had taken to implement the sanctions;²⁷ (b) Considering information brought to its attention by States concerning sanctions violations and recommending appropriate measures in response thereto;²⁸ (c) Making periodic reports to the Security Council on information submitted to it regarding alleged violations of the sanctions, identifying where possible persons or entities, including vessels and aircraft, reported to be engaged in such violations;²⁹ (d) Promulgating guidelines to facilitate the implementation of the sanctions;³⁰ (e) Deciding upon requests for exemptions from the sanctions;³¹ (f) Examining the reports submitted by States to both it and the Secretary-General;³² and (g) Making relevant information publicly available, including through information technology.³³

²⁶ S/RES/1298 (17 May 2000), operative paragraph 8.

²⁷ S/RES/1298 (17 May 2000), operative paragraph 8(a).

²⁸ S/RES/1298 (17 May 2000), operative paragraph 8(b).

²⁹ S/RES/1298 (17 May 2000), operative paragraph 8(c).

³⁰ S/RES/1298 (17 May 2000), operative paragraph 8(d).

³¹ S/RES/1298 (17 May 2000), operative paragraph 8(e).

³² S/RES/1298 (17 May 2000), operative paragraph 8(f).

³³ S/RES/1298 (17 May 2000), operative paragraph 13.

In the course of its activities, the Ethiopia/Eritrea committee issued two annual reports,³⁴ and one report listing the reports received from States on steps taken to implement the sanctions.³⁵ The main observation the Committee made was that, as it did not have any specific monitoring mechanism to ensure the effective implementation of the arms embargo, it relied solely on the cooperation of States and organizations in a position to provide pertinent information and it was therefore constrained in the discharge of its mandate.³⁶

17.4.3 States

When the Council established the Ethiopia and Eritrea sanctions régime, it called upon all States to act strictly in conformity with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.³⁷ It also requested States to report to the Secretary-General on steps taken to give effect to the sanctions,³⁸ and to report information on possible violations of the sanctions.³⁹

³⁴ S/2000/1259 (29 December 2000), annex: *Report of the Security Council Committee established pursuant to resolution 1298 (2000)* [hereafter “*First report of the 1298 Committee*”, containing a report on the activities of the Committee from May-December 2000]; S/2001/503 (18 May 2001), annex: *Report of the Security Council Committee established pursuant to resolution 1298 (2000)* [hereafter “*Final report of the 1298 Committee*”, containing a report on the activities of the Committee from 1 January to 16 May 2001, when the Committee was dissolved].

³⁵ S/2001/39 (12 January 2001): *Letter dated 29 December 2000 from the Chairman of the Security Council Committee established pursuant to Security Council resolution 1298 (2000) concerning the situation between Ethiopia and Eritrea addressed to the President of the Security Council* [*Report of the Security Council Committee established pursuant to resolution 1298 (2000)*, containing a report pursuant to paragraph 11 of resolution 1298 (2000), listing the reports received from States on measures taken to implement the sanctions].

³⁶ See *First report of the 1298 Committee*, above note 34, paragraph 7; *Final report of the 1298 Committee*, above note 34, paragraph 8.

³⁷ S/RES/1298 (17 May 2000), operative paragraph 9.

³⁸ S/RES/1298 (17 May 2000), operative paragraph 11.

³⁹ S/RES/1298 (17 May 2000), operative paragraph 12.

17.4.4 International and regional organizations

When the Council established the Ethiopia and Eritrea sanctions régime, it requested the Chairman of the OAU to consider dispatching urgently his Personal Envoy to the region to seek immediate cessation of hostilities.⁴⁰ At the same time, the Council also called upon international and regional organizations to act strictly in conformity with the sanctions, notwithstanding the existence of any conflicting legal rights or obligations.⁴¹

17.5 Termination of the Ethiopia/Eritrea sanctions régime

When the Council initiated the sanctions régime against Ethiopia/Eritrea, it decided that the sanctions would be imposed for an initial period of twelve months.⁴² At the end of that period, the Council would decide whether to extend the sanctions, based on an assessment of whether the Governments of Ethiopia and Eritrea had complied with the objectives of the sanctions régime.⁴³ On 15 May 2001, the Council adopted a presidential statement, confirming that the sanctions régime would indeed expire the following day.⁴⁴ In that statement, the Council emphasized the importance of the Algiers Peace Agreement, which the parties had signed on 12 December 2000,⁴⁵ recognised that the signing of the Algiers Agreement was consistent with the objectives of the Ethiopia/Eritrea sanctions régime, and stated that, under the existing circumstances, it had not extended the sanctions beyond the expiration date of 16 May 2001. The Council urged the parties, however, to

⁴⁰ S/RES/1298 (17 May 2000), operative paragraph 5.

⁴¹ S/RES/1298 (17 May 2000), operative paragraph 9.

⁴² S/RES/1298 (17 May 2000), operative paragraph 16.

⁴³ *Ibid.*

⁴⁴ S/PRST/2001/14 (15 May 2001).

⁴⁵ S/2000/1183 (13 December 2000), *Identical letters dated 12 December 2000 from the representative of Algeria addressed to the Secretary-General and the President of the Security Council*, annex.

focus their efforts on reconstruction, development and reconciliation rather than on weapons procurement and other military activities, and expressed the intention take appropriate measures if the situation between Eritrea and Ethiopia again threatened regional peace and security.

17.6 Notable aspects of the Ethiopia/Eritrea sanctions régime

The Ethiopia and Eritrea sanctions régime was notable largely because it became the régime of the shortest duration yet imposed by the Security Council – twelve months. It also provided the first instance of the Council establishing a concrete time-limit for a sanctions régime, and it remains the only occasion on which a time-bound sanctions régime has not been extended.⁴⁶ Finally, the Ethiopia and Eritrea sanctions régime was the first U.N. sanctions régime to be imposed against multiple State targets.⁴⁷

⁴⁶ S/RES/1298 (17 May 2000), operative paragraph 16 (deciding that the sanctions were established for twelve months and that the Council would decide at the end of that period whether Ethiopia and Eritrea had complied with the objectives of the sanctions régime and thus whether to extend the sanctions). The Council has also experimented with time-limits in its oversight of the Sierra Leone, Afghanistan/Taliban/Al Qaida, and Liberia/1343 sanctions régimes. For further discussion of the manner in which the Council has employed time-limits, see Chapter 8, section 8.3.2.

⁴⁷ Although the former Yugoslavia sanctions régime was ultimately implemented against more than one State, at the time of its establishment it was levelled against a single target – Yugoslavia.

18. *The second Liberia sanctions régime (“Liberia II”)*

In March 2001, in the same resolution by which it terminated the sanctions régime imposed against Liberia in 1992 and dissolved the 985/Liberia Sanctions Committee, the Security Council took the unusual step of imposing a new sanctions régime against Liberia.¹ The main objective of the new sanctions régime was to halt the Liberian Government’s support of armed rebel groups in neighbouring countries, and in particular of the Sierra Leonean rebel group the Revolutionary United Front (RUF). With the improvement of the situation in Sierra Leone, the focus of the sanctions turned to Liberia’s continuing support for rebel groups in other neighbouring countries, including Guinea and Côte d’Ivoire. The sanctions régime initially consisted of a blend of targeted sanctions, including arms, diamond and travel sanctions. In May 2003 the Council expanded the sanctions régime slightly, adding sanctions against Liberian exports of timber and timber products and applying further travel sanctions. In December 2003 the Security Council terminated the Liberia II sanctions régime, replacing it with a third Liberian sanctions régime.²

18.1 The constitutional basis for imposing a new sanctions régime against Liberia

When the Security Council established the second sanctions régime against Liberia, it expressed deep concern at the evidence presented by the Panel of Experts on Sierra Leone that the Government of Liberia was actively supporting the Sierra Leonean rebel group the Revolutionary United Front (RUF), including by participating in the trade of

¹ For details relating to the earlier sanctions régime against Liberia, see Appendix 8, above.

² For details regarding the Liberia III sanctions régime, see Appendix 20, below.

diamonds, which represented a major source of income for the RUF.³ It then determined that the active support provided by the Liberian Government for armed rebel groups in neighbouring countries, and in particular for the RUF in Sierra Leone, constituted a threat to international peace and security.⁴ It then noted that it was acting under Chapter VII of the Charter of the United Nations before imposing sanctions.⁵

In May 2002, when the Council extended the sanctions, it determined that the active support provided by the Liberian Government for armed rebel groups in the region, including the RUF, constituted a threat to international peace and security,⁶ and noted that it was acting under Chapter VII of the Charter.⁷ In May 2003, when the Council again extended the initial sanctions and introduced additional timber and travel sanctions, it determined that the active support provided by the Liberian Government for armed rebel groups in the region, including to rebels in Côte d'Ivoire and former RUF combatants who continued to destabilize the region, constituted a threat to international peace and security,⁸ and noted that it was acting under Chapter VII of the Charter.⁹

³ S/RES/1343 (7 March 2001), preambular paragraph 4. For discussion of the report of the Panel of Experts on Sierra Leone, see section 14.4, above. For the report itself, see: S/2000/1195 (20 December 2000), enclosure: *Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000), paragraph 19, in relation to Sierra Leone*. On a number of previous occasions the Council had expressed grave concern at reports that support was being provided to rebel groups in Sierra Leone: see, e.g., S/PRST/1999/1: Presidential statement dated 7 January 1999; S/RES/1231 (11 March 1999), operative paragraph 5.

⁴ S/RES/1343 (7 March 2001), preambular paragraph 8.

⁵ S/RES/1343 (7 March 2001), preambular paragraph 9.

⁶ S/RES/1408 (6 May 2002), preambular paragraph 11.

⁷ S/RES/1408 (6 May 2002), preambular paragraph 12.

⁸ S/RES/1478 (6 May 2003), preambular paragraph 13.

⁹ S/RES/1478 (6 May 2003), preambular paragraph 14.

18.2 The objective of the Liberia II sanctions régime

The major objective of the 1343 Liberia sanctions régime was to ensure that the Liberian Government stopped providing support for the RUF in Sierra Leone and other armed rebel groups in the region. In order to achieve that overall goal, the Council demanded that the Liberian Government take the following concrete steps: (a) Expel all RUF members from Liberia and prohibit all RUF activities on its territory;¹⁰ (b) Cease all financial and military support to the RUF and take steps to ensure that no such support was provided from Liberia or by Liberian nationals;¹¹ (c) Cease all import of Sierra Leone rough diamonds controlled through the Certificate of Origin regime of the Government of Sierra Leone, in accordance with resolution 1306 (2000);¹² (d) Freeze funds or financial resources or assets that were made available by its nationals or within its territory for the benefit of the RUF or entities owned or controlled by the RUF;¹³ and (e) Ground all Liberia-registered aircraft operating within its jurisdiction until it updated its register of aircraft pursuant to Annex VII to the Chicago Convention on International Civil Aviation of 1944 and provide the Council with updated information concerning the registration and ownership of each aircraft registered in Liberia.¹⁴ The fact that those demands constituted the objectives of the 1343 sanctions régime was reinforced by the manner in which the Council noted that the sanctions would be terminated upon a decision by the Security Council that the Liberian Government had taken the concrete steps stipulated.¹⁵

¹⁰ S/RES/1343 (7 March 2001), operative paragraph 2(a).

¹¹ S/RES/1343 (7 March 2001), operative paragraph 2(b).

¹² S/RES/1343 (7 March 2001), operative paragraph 2(c).

¹³ S/RES/1343 (7 March 2001), operative paragraph 2(d).

¹⁴ S/RES/1343 (7 March 2001), operative paragraph 2(e).

¹⁵ See, e.g., S/RES/1343 (7 March 2001), operative paragraphs 8, 9, 10, 11.

In addition to outlining the above particular objectives of the 1343 Liberia sanctions régime, the Security Council also noted that the steps to be taken by the Liberian Government were intended to lead to progress in the peace process in Sierra Leone.¹⁶ It therefore called upon President Taylor of Liberia to help ensure that the RUF took the following steps: (a) Allow the United Nations Mission in Sierra Leone (UNAMSIL) free access throughout Sierra Leone; (b) Release all abductees; (c) Enter their fighters in the disarmament, demobilization and reintegration process; and (d) Return all weapons and other equipment seized from UNAMSIL.¹⁷

In May 2002, when the Security Council extended the sanctions régime for a further period of twelve months, it noted that the Liberian Government had complied with the demand that it update its register of aircraft pursuant to Annex VII to the Chicago Convention on International Civil Aviation of 1944 and that it provide the Council with updated information regarding the registration and ownership of aircraft registered in Liberia.¹⁸ The Council decided, however, that Liberia had failed to comply with the other four key demands and thus extended the sanctions for a further twelve months.¹⁹ The objectives of the sanctions therefore continued to be compliance with the remaining demands outlined in resolution 1343 (2001).²⁰ The Council also stressed that its demands were intended to lead to consolidation of the peace process in Sierra Leone and to further progress in the peace process in the Mano River Union as a whole.²¹

¹⁶ S/RES/1343 (7 March 2001), operative paragraph 3.

¹⁷ S/RES/1343 (7 March 2001), operative paragraph 3(a)-(d).

¹⁸ S/RES/1408 (6 May 2002), operative paragraph 2.

¹⁹ S/RES/1408 (6 May 2002), operative paragraphs 1, 5.

²⁰ S/RES/1408 (6 May 2002), operative paragraphs 1, 3, 5.

²¹ S/RES/1408 (6 May 2002), operative paragraph 3.

In May 2003, when the Council again extended the initial sanctions and incorporated the additional timber and travel sanctions, it reaffirmed that the objective of the sanctions remained achieving the compliance of the Liberian Government with the demands outlined in resolution 1343 (2001).²² It also stressed again that the demands it was making of the Liberian Government were intended to consolidate peace and stability in Sierra Leone and to build and strengthen peaceful relations among the countries of the region.²³

18.3 The scope of the Liberia II sanctions régime

When the 1343 sanctions régime was established, it consisted of a mixture of sanctions against arms, diamonds and the travel of senior officials in the Liberian Government and armed forces, as well as of their spouses. Under the arms sanctions, all States were required to prevent the sale or supply to Liberia of arms and related *matériel* and equipment, as well as the provision to Liberia of training or assistance related to the provision, manufacture or use of arms and related *matériel* and equipment.²⁴ Under the diamond sanctions, all States were required to prevent the direct or indirect import of all rough diamonds from Liberia, whether or not those diamonds originated in Liberia.²⁵ Under the travel sanctions, States were required to prevent the entry into or transit through their territories of senior members of the Liberian Government and armed forces, as well as the

²² See, e.g., S/RES/1478 (6 May 2003), operative paragraphs 1, 3, 10, 12, 17.

²³ S/RES/1478 (6 May 2003), operative paragraph 3.

²⁴ S/RES/1343 (7 March 2001), operative paragraphs 5(a), 5(b). The Council did provide for some exemptions from these sanctions, however, for non-lethal military equipment intended solely for humanitarian or protective use, as approved by the 1343 Committee, and for protective clothing for the personal use of United Nations personnel, media representatives, and humanitarian and development workers: see S/RES/1343 (7 March 2001), operative paragraphs 5(c), 5(d).

²⁵ S/RES/1343 (7 March 2001), operative paragraph 6. The diamond sanctions were initially imposed for a period of twelve months, but they have since been extended for two additional

spouses of those individuals and any other individuals providing financial or military support to rebel groups in countries neighbouring Liberia, and in particular the RUF in Sierra Leone.²⁶

In May 2002, the Council foreshadowed a potential contraction in the scope of the sanctions, by deciding that rough diamonds controlled by the Liberian Government through an effective Certificate of Origin would be exempt from the sanctions.²⁷ In May 2003, the Council expanded the scope of the 1343 sanctions régime, adding timber sanctions and targeted travel sanctions. The timber sanctions required all States to prevent the import of all round logs and timber products originating in Liberia.²⁸ The travel sanctions required all

periods of twelve months: see S/RES/1408 (6 May 2002), operative paragraph 5; S/RES/1478 (6 May 2003), operative paragraph 10.

²⁶ S/RES/1343 (7 March 2001), operative paragraph 7(a). The Council outlined certain exemptions from the travel restrictions, however, providing that they would not apply in the following circumstances: (a) where the application of the sanctions would require a State to deny entry to its own nationals [operative paragraph 7(a)]; (b) to representatives of the Liberian Government travelling on official business to United Nations headquarters or to official meetings of the Mano River Union, ECOWAS or the OAU [operative paragraph 7(a)]; and (c) when travel was justified on the grounds of humanitarian need or where it would promote Liberian compliance with the objectives of the sanctions régime or assist in the peaceful resolution of conflict in the subregion: [operative paragraph 7(b)].

²⁷ S/RES/1408 (6 May 2002), operative paragraphs 8. The exemption would only become operative, however, once the 1343 Committee had reported to the Council that an effective and internationally verifiable Certificate of Origin regime was ready to become fully operational. At the time of writing the exemption has still not entered into force. In May 2003, however, the Council reaffirmed its decision that the exemption would come into effect once an effective and internationally verifiable Certificate of Origin regime was ready to become fully operational: S/RES/1478 (6 May 2003), operative paragraph 14.

²⁸ S/RES/1478 (6 May 2003), operative paragraph 17. A year earlier the Council had foreshadowed the potential for the logging industry to be sanctioned, by calling upon the Liberian Government to demonstrate, including through the establishment of transparent and internationally verifiable audit régimes, that the revenue derived from its shipping and timber industries was being used for legitimate social, humanitarian and development and not for purposes that violated the objectives of the sanctions régime: S/RES/1408 (6 May 2002), operative paragraph 10. Before it eventually applied the logging sanctions, the Council noted that it considered that the audits commissioned by the Liberian Government did not demonstrate that the revenue derived from the shipping and timber industries was being used for legitimate social, humanitarian and development purposes, nor that it was not being used in violation of the sanctions: S/RES/1478 (6 May 2003), operative paragraph 16. This decision by the Council is interesting for two reasons. First, it suggests that if compliance with the objectives of the sanctions régime is not forthcoming from the Liberian Government, then the next area that is likely to be sanctioned is the shipping industry. Second, the Council's

States to prevent the entry into or transit through their territories of individuals determined by the 1343 Committee to be in violation of the arms sanctions imposed by paragraph 5 of resolution 1343 (2001).²⁹ In September 2004 the Council outlined an exemption from the arms sanctions, providing that they would not apply to arms and related materiel and technical training and assistance intended solely for support or use by the United Nations Mission in Liberia (UNMIL).³⁰

18.4 The administration, monitoring and enforcement of the Liberia II sanctions régime

The Security Council bestowed responsibilities for the administration, implementation and enforcement of the 1343 Liberia sanctions régime upon a range of actors, including a sanctions committee, a Panel of Experts, and the Secretary-General.

18.4.1 The 1343/Liberia II Committee

The Security Council established the 1343 Liberia Sanctions Committee (the “1343 Committee” or the “Liberia II Committee”) in the same resolution which imposed the new sanctions régime against Liberia.³¹ The 1343 Committee was eventually dissolved in December 2003, at the same time that the 1343 sanctions régime was terminated.³²

The mandate of the 1343 Committee

As part of its initial mandate, the 1343 Committee was entrusted with the standard responsibilities usually assigned to sanctions committees, as well as some that were

decision to apply sanctions on the basis that the Liberian Government had not demonstrated that its revenue was not being used to violate the sanctions might be interpreted to have followed a rationale of “guilty until proven innocent”.

²⁹ S/RES/1478 (6 May 2003), operative paragraph 28.

³⁰ S/RES/1509 (19 September 2003), operative paragraph 12.

³¹ S/RES/1343 (7 March 2001), operative paragraph 14.

particular to its circumstances. Its tasks therefore included reporting to the Council on its work and with its observations and recommendations, and: (a) Seeking from all States information regarding the actions taken by them to implement the sanctions;³³ (b) Taking appropriate action on information concerning alleged violations of the sanctions, identifying where possible persons or entities reported to be engaged in such violations, and making periodic reports to the Council;³⁴ (c) Promulgating guidelines to facilitate the implementation of the sanctions;³⁵ (d) Deciding upon requests for exemptions from the sanctions;³⁶ (e) Designating the individuals subject to the travel sanctions and updating that list regularly;³⁷ (f) Making relevant information, including the list of individuals subject to the travel sanctions, publicly available through appropriate media, including through the improved use of information technology;³⁸ (g) Making recommendations to the Council on increasing the effectiveness of the sanctions and on ways to limit any unintended effects of the sanctions on the Liberian population;³⁹ (h) Cooperating with other relevant Security Council Sanctions Committees, in particular the 1132/Sierra Leone Committee and the 864/Angola (UNITA) Committee;⁴⁰ and (i) Establishing a list of RUF members present in Liberia, whom the Liberian Government was required to expel in accordance with the objectives of the sanctions régime.⁴¹

³² S/RES/1521 (22 December 2003), operative paragraph 1.

³³ S/RES/1343 (7 March 2001), operative paragraph 14(a).

³⁴ S/RES/1343 (7 March 2001), operative paragraph 14(b).

³⁵ S/RES/1343 (7 March 2001), operative paragraph 14(c).

³⁶ S/RES/1343 (7 March 2001), operative paragraph 14(d).

³⁷ S/RES/1343 (7 March 2001), operative paragraph 14(e).

³⁸ S/RES/1343 (7 March 2001), operative paragraph 14(f).

³⁹ S/RES/1343 (7 March 2001), operative paragraph 14(g).

⁴⁰ S/RES/1343 (7 March 2001), operative paragraph 14(h).

⁴¹ S/RES/1343 (7 March 2001), operative paragraph 14(i).

In May 2002, the Council modified the Committee's mandate marginally. It reaffirmed that the Committee's responsibilities continued to include all of the tasks outlined in resolution 1343 (2001) except for the maintenance of a list of RUF members who were present in Liberia and whom the Liberian Government was required to expel.⁴² It also requested that the Committee consider, and take appropriate action on, information brought to its attention concerning any alleged violations of the first sanctions régime imposed against Liberia, whilst that sanctions régime had been in force.⁴³ The Council's decision to ask the 1343 Committee to assume responsibilities relating to the earlier sanctions régime raised interesting legal issues, as the Council was effectively asking the Committee to explore and act upon violations of a terminated sanctions régime, thus leading to the potential conclusion that it was effectively resurrecting that earlier régime.

Activities of the 1343/Liberia Committee

In the course of its activities, the 1343 Committee issued two annual reports.⁴⁴ As part of its activities in 2001, the Committee: established the lists requested by the Council of RUF members subject to expulsion from Liberia and of individuals subject to the travel sanctions;⁴⁵ considered applications for exemptions from the travel sanctions;⁴⁶ considered

⁴² S/RES/1408 (6 May 2002), operative paragraph 13. It is possible, however, that the Security Council's explicit reaffirmation of the Committee's tasks as those articulated in "paragraphs 14 (a) to (h)" was an oversight. See, e.g., the Committee's annual report for 2002: S/2002/1394 (20 December 2002), paragraph 5 [stating that in paragraph 13 of resolution 1408 (2002) the Security Council had requested it to continue with its mandate as set out in resolution 1343 (2001)].

⁴³ S/RES/1408 (6 May 2002), operative paragraph 14.

⁴⁴ S/2002/83 (18 January 2002), annex: *Report of the Security Council Committee established pursuant to resolution 1343 (2001) concerning Liberia*, (hereafter "*First report of the 1343 Committee*"), containing a summary of the activities of the Committee from its establishment on 7 March 2001 until 31 December 2001; S/2002/1394 (20 December 2002), annex: *Report of the 1343 Committee for 2002*.

⁴⁵ *First report of the 1343 Committee*, *ibid*, paragraphs 5, 6.

⁴⁶ *Ibid*, paragraph 8.

requests from individuals seeking to have their names removed from the travel ban list;⁴⁷ and received 42 replies from States regarding actions taken by them to implement the sanctions.⁴⁸ In addition, the Chairman of the Committee conducted a fact-finding mission to the region, visiting Mali, Guinea, Sierra Leone, Liberia and Nigeria.⁴⁹ The purpose of the mission was to ascertain the probable impact of the sanctions, to reiterate to the Liberian Government the demands of the Security Council under resolution 1343 (2001) and to present that Government with the list of RUF members subject to expulsion. In its observations, the Committee noted that, in the absence of a specific monitoring mechanism to ensure the implementation of the 1343 sanctions régime, it was reliant upon States and organizations to come forward and provide it with pertinent information.⁵⁰

As part of its activities in 2002, the Committee: considered applications for exemptions from the travel sanctions;⁵¹ conducted four reviews of the list of those banned from travel;⁵² received 10 additional replies from States regarding actions taken to implement the sanctions;⁵³ addressed letters to States in pursuit of alleged violations of the sanctions;⁵⁴ engaged in correspondence with the Liberian Government concerning its obligations to establish a Certificate of Origin Scheme for its diamond trade and to report to the Committee the results of a transparent and internationally verifiable audit of its shipping

⁴⁷ *Ibid*, paragraphs 8, 9.

⁴⁸ *Ibid*, paragraph 11.

⁴⁹ *Ibid*, paragraph 15.

⁵⁰ *Ibid*, paragraph 19.

⁵¹ *Report of the 1343 Committee for 2002*, above note 44, paragraph 8.

⁵² *Ibid*, paragraph 9.

⁵³ *Ibid*, paragraph 11.

⁵⁴ *Ibid*, paragraphs 12-17.

and timber industries;⁵⁵ and participated in five joint informal meetings with two other sanctions committees – the 1132/Sierra Leone Committee and the 864/Angola (UNITA) Committee.⁵⁶ As it had done in its annual report for 2001, the Committee again observed that that, in the absence of a specific monitoring mechanism to ensure the implementation of the 1343 sanctions régime, it was reliant upon States and organizations to come forward and provide it with pertinent information.⁵⁷

18.4.2 The Secretary-General

When the Security Council initiated the 1343 Liberia sanctions régime, it requested the Secretary-General to report to it on the following topics: (a) The extent to which the Liberian Government had complied with its obligations under the sanctions régime and progress made towards the achievement of the objectives relating to the cessation of support for RUF operations in Sierra Leone;⁵⁸ (b) A preliminary assessment of the potential economic, humanitarian and social impact on the Liberian population of possible follow-up action by the Council in relation to the recommendations to be made by the Panel of Experts;⁵⁹ and (c) A report on the steps taken by the Liberian Government to improve its capacity in air traffic control and surveillance in accordance with the recommendations of the Panel of Experts and any advice which might be provided by the ICAO.⁶⁰ At the same time,

⁵⁵ *Ibid*, paragraph 19.

⁵⁶ *Ibid*, paragraph 20.

⁵⁷ *Ibid*, paragraph 23.

⁵⁸ S/RES/1343 (7 March 2001), operative paragraph 12.

⁵⁹ S/RES/1343 (7 March 2001), operative paragraph 13(a).

⁶⁰ S/RES/1343 (7 March 2001), operative paragraph 13(b).

the Council also requested the Secretary-General to establish, for a period of six months, a Panel of Experts to investigate the implementation of the 1343 Liberia sanctions régime.⁶¹

In February 2002, when the Council decided to re-establish the Panel of Experts on Liberia for a period of five weeks, it requested the Secretary-General to appoint no more than five experts to the Panel.⁶² In May 2002, when the Council extended the sanctions, it requested the Secretary-General to undertake the following tasks: (a) To report to it by 21 October 2002, and thereafter at six-monthly intervals, on whether Liberia had complied with the requirements of the sanctions régime;⁶³ and (b) To establish, for a period of three months, a Panel of Experts consisting of no more than five members.⁶⁴

In January 2003, when the Security Council decided to re-establish the Panel of Experts for an additional period of three months, it again requested the Secretary-General to appoint no more than five experts to the Panel.⁶⁵ In May 2003, when the Council expanded the scope of the sanctions régime to include logging sanctions and additional travel sanctions, it requested the Secretary-General to undertake the following additional tasks: (a) To submit to it by 7 August 2003 a report on the possible humanitarian or socio-economic impact of the logging sanctions;⁶⁶ (b) To submit to it by 21 October 2003 and at six-monthly intervals thereafter, a report on whether Liberia had complied with the requirements of the sanctions

⁶¹ S/RES/1343 (7 March 2001), operative paragraph 19. For details relating to the mandate and activities of the Panel of Experts on Liberia, see below.

⁶² S/RES/1395 (27 February 2002), operative paragraph 5. For details relating to the re-establishment and mandate of the Panel, see below.

⁶³ S/RES/1408 (6 May 2002), operative paragraph 11.

⁶⁴ S/RES/1408 (6 May 2002), operative paragraph 16.

⁶⁵ S/RES/1458 (28 January 2003), operative paragraph 6. For details relating to the re-establishment and mandate of the Panel, see below.

⁶⁶ S/RES/1478 (6 May 2003), operative paragraph 19.

régime;⁶⁷ and (c) To establish, for a period of five months, a Panel of Experts consisting of up to six members to investigate the implementation of the sanctions, and to provide the necessary resources for the Panel's activities.⁶⁸

18.4.3 States

In addition to the steps States were obligated to take under the 1343 Liberia sanctions régime,⁶⁹ they were also requested by the Security Council to take certain additional extra measures to improve the régime's implementation. The additional requests were sometimes been addressed to States in general and sometimes directed at States in the region or regional organizations such as ECOWAS.

i. States in general

In March 2001, when the Security Council initiated the sanctions régime, it directed a number of initiatives at States in general, by: (a) Calling upon States and relevant international organizations to offer assistance to diamond-exporting West African States seeking to establish Certificate of Origin schemes;⁷⁰ (b) Calling upon the international community to provide the necessary assistance to prevent the proliferation and illicit trafficking of light weapons in West Africa, and thus to facilitate the implementation of the ECOWAS moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa;⁷¹ (c) Requesting all States to report to the 1343

⁶⁷ S/RES/1478 (6 May 2003), operative paragraph 20.

⁶⁸ S/RES/1478 (6 May 2003), operative paragraph 25.

⁶⁹ Those obligations are outlined in section 18.3, above.

⁷⁰ S/RES/1343 (7 March 2001), operative paragraph 16.

⁷¹ S/RES/1343 (7 March 2001), operative paragraph 17.

Committee on steps taken to implement the sanctions;⁷² (d) Calling upon States to take appropriate measures to ensure that individuals and companies in their jurisdiction acted in conformity with United Nations sanctions and to take the necessary judicial and administrative actions to end illegal activities by those individuals and companies;⁷³ (e) Calling upon all States to act strictly in accordance with the sanctions notwithstanding the existence of any conflicting legal rights or obligations;⁷⁴ and (f) Urging all States to cooperate fully with the 1343 Committee and the Liberia Panel of Experts, including by supplying information on possible violations of the sanctions.⁷⁵

In February 2002, when the Council re-established the Panel of Experts for a further period of five weeks, it requested all States to cooperate fully with the Panel.⁷⁶ In May 2002, when the Council extended the sanctions régime, it directed additional initiatives at States in general, by: (a) Reiterating its call upon States and relevant international organizations to offer assistance to the Liberian Government and other diamond exporting countries in West Africa with their Certificate of Origin régimes;⁷⁷ (b) Requesting all States to report on measures taken to implement the sanctions;⁷⁸ (c) Calling upon States to take appropriate measures to ensure that individuals and companies in their jurisdiction acted in conformity with United Nations sanctions and to take the necessary judicial and administrative actions to end illegal activities by those individuals and companies;⁷⁹

⁷² S/RES/1343 (7 March 2001), operative paragraph 18.

⁷³ S/RES/1343 (7 March 2001), operative paragraph 21.

⁷⁴ S/RES/1343 (7 March 2001), operative paragraph 22.

⁷⁵ S/RES/1343 (7 March 2001), operative paragraph 24.

⁷⁶ S/RES/1395 (27 February 2002), operative paragraph 6.

⁷⁷ S/RES/1408 (6 May 2002), operative paragraph 9.

⁷⁸ S/RES/1408 (6 May 2002), operative paragraph 15.

⁷⁹ S/RES/1408 (6 May 2002), operative paragraph 18.

(d) Requesting all States, and in particular arms exporting countries, to exercise the highest degree of responsibility in weapons transactions to prevent the illegal diversion and re-export of those weapons;⁸⁰ and (e) Urging all States to cooperate fully with the 1343 Committee and the Liberia Panel of Experts.⁸¹

In January 2003, when the Council re-established the Panel of Experts for an additional period of three months, it urged all States to cooperate fully with the Panel.⁸² In May 2003, when the Council expanded the scope of the sanctions régime, it directed the additional initiatives at States in general, by: (a) Reiterating its call upon States and relevant international organizations to offer assistance to the Liberian Government and other diamond exporting countries in West Africa with their Certificate of Origin régimes;⁸³ (b) Calling upon States to take appropriate measures to ensure that individuals and companies in their jurisdiction acted in conformity with United Nations sanctions and to take the necessary judicial and administrative actions to end illegal activities by those individuals and companies;⁸⁴ and (c) Urging all States to cooperate fully with the Panel of Experts on Liberia.⁸⁵

ii. Regional States

In March 2001, when the Security Council initiated the sanctions régime, it directed a number of initiatives at regional States, by: (a) Demanding that all States in the region take action to prevent armed individuals and groups from using their territory to launch attacks

⁸⁰ S/RES/1408 (6 May 2002), operative paragraph 19.

⁸¹ S/RES/1408 (6 May 2002), operative paragraph 21.

⁸² S/RES/1458 (28 January 2003), operative paragraph 7.

⁸³ S/RES/1478 (6 May 2003), operative paragraph 15.

⁸⁴ S/RES/1478 (6 May 2003), operative paragraph 27.

⁸⁵ S/RES/1478 (6 May 2003), operative paragraph 33.

upon neighbouring countries, and refrain from any action that might further destabilize the situation on the borders between Guinea, Liberia and Sierra Leone;⁸⁶ (b) Urging all diamond exporting countries in West Africa to establish Certificate of Origin régimes for the trade in rough diamonds;⁸⁷ and (c) Calling upon all regional organizations to act strictly in accordance with the sanctions notwithstanding the existence of any conflicting legal rights or obligations.⁸⁸

In May 2002, when the Council extended the sanctions régime, it directed additional initiatives at regional States, by: (a) Demanding that all States in the region cease providing military support to armed groups in neighbouring countries, take action to prevent armed individuals and groups from using their territory to launch attacks upon neighbouring countries, and refrain from any action that might further destabilize the situation on the borders between Guinea, Liberia and Sierra Leone;⁸⁹ and (b) Inviting ECOWAS to report regularly to the 1343 Committee on activities taken by its members to implement the sanctions.⁹⁰

In May 2003, when the Council expanded the scope of the sanctions régime, it directed additional initiatives at regional States, by: (a) Calling upon all States in the region, and in particular Liberia, to participate actively in all regional peace initiatives, particularly those of ECOWAS, the International Contact Group, the Mano River Union and the Rabat Process;⁹¹ (b) Reiterating its demand that all States in the region cease providing military

⁸⁶ S/RES/1343 (7 March 2001), operative paragraph 4.

⁸⁷ S/RES/1343 (7 March 2001), operative paragraph 16.

⁸⁸ S/RES/1343 (7 March 2001), operative paragraph 22.

⁸⁹ S/RES/1408 (6 May 2002), operative paragraph 4.

⁹⁰ S/RES/1408 (6 May 2002), operative paragraph 12.

⁹¹ S/RES/1478 (6 May 2003), operative paragraph 4.

support to armed groups in neighbouring countries, take action to prevent armed individuals and groups from using their territory to launch attacks upon neighbouring countries, and refrain from any action that might further destabilize the situation in the region;⁹² (c) Inviting ECOWAS to report regularly to the 1343 Committee on activities taken by its members to implement the sanctions and to implement the ECOWAS Moratorium on small arms and light weapons;⁹³ (d) Calling upon States of the subregion to strengthen the measures they had taken to combat the spread of small arms and light weapons and mercenary activities and to improve the effectiveness of the ECOWAS Moratorium;⁹⁴ and (e) Calling on the Member States of ECOWAS to cooperate fully with the Panel of Experts on Liberia.⁹⁵

18.4.4 International organizations

When the Council established the 1343 Liberia sanctions régime, it called upon relevant international organizations to offer assistance to the Liberian Government and other diamond exporting countries in West Africa with their Certificate of Origin régimes,⁹⁶ and it called upon all relevant international organizations to act strictly in accordance with the sanctions notwithstanding the existence of any conflicting legal rights or obligations.⁹⁷

⁹² S/RES/1478 (6 May 2003), operative paragraph 9.

⁹³ S/RES/1478 (6 May 2003), operative paragraph 21.

⁹⁴ S/RES/1478 (6 May 2003), operative paragraph 22.

⁹⁵ S/RES/1478 (6 May 2003), operative paragraph 30.

⁹⁶ S/RES/1343 (7 March 2001), operative paragraph 16. The Council reiterated that call in: S/RES/1408 (6 May 2002), operative paragraph 9; S/RES/1478 (6 May 2003), operative paragraph 15.

⁹⁷ S/RES/1343 (7 March 2001), operative paragraph 22.

18.4.5 The Liberia II Panel of Experts

When the Security Council established the 1343 sanctions régime against Liberia, it also requested the Secretary-General to establish a Panel of Experts.⁹⁸ The Panel would operate for a period of six months and it would consist of no more than five experts.⁹⁹ The Panel was given a mandate to undertake the following tasks: (a) To investigate violations of the sanctions;¹⁰⁰ (b) To collect information on the compliance of the Liberian Government with the demands articulated by the Council;¹⁰¹ (c) To investigate possible links between the exploitation of natural resources and other forms of economic activity in Liberia, and the fuelling of conflict in Sierra Leone and other neighbouring countries, as highlighted by the Panel of Experts on Sierra Leone;¹⁰² (d) To collect information linked to the illegal activities of individuals who had violated the arms sanctions against Sierra Leone;¹⁰³ (e) To report to the Council with observations and recommendations on the matters within its mandate;¹⁰⁴ (f) To keep the 1343 Committee updated on its activities;¹⁰⁵ and (g) To bring relevant information to the attention of the States concerned and to allow them the right of reply.¹⁰⁶

In February 2002, the Council decided to re-establish the Panel of Experts, for a period of five weeks.¹⁰⁷ The mandate of the re-established Panel was to conduct a follow-up assessment mission to Liberia and neighbouring States in order to investigate and compile

⁹⁸ S/RES/1343 (7 March 2001), operative paragraph 19.

⁹⁹ *Ibid.*

¹⁰⁰ S/RES/1343 (7 March 2001), operative paragraph 19(a).

¹⁰¹ S/RES/1343 (7 March 2001), operative paragraph 19(b).

¹⁰² S/RES/1343 (7 March 2001), operative paragraph 19(c).

¹⁰³ S/RES/1343 (7 March 2001), operative paragraph 19(d).

¹⁰⁴ S/RES/1343 (7 March 2001), operative paragraph 19(e).

¹⁰⁵ S/RES/1343 (7 March 2001), operative paragraph 19(f).

¹⁰⁶ S/RES/1343 (7 March 2001), operative paragraph 20.

¹⁰⁷ S/RES/1395 (27 February 2002), operative paragraph 3.

a brief independent audit of the Liberian Government's compliance with the Council's demands under the sanctions régime, as well as of any violations of the sanctions and to report to it with its observations and recommendations on those matters.¹⁰⁸ The Panel would again consist of no more than five experts, drawing as much as possible on the expertise of the original Panel.

In May 2002, when the Council extended the sanctions, it requested the Secretary-General to establish for a period of three months a Panel of Experts consisting of no more than five members.¹⁰⁹ The Panel of Experts was mandated to conduct a follow-up assessment mission to Liberia and neighbouring States, to investigate and compile a report on the Liberian Government's compliance with the Council's demands under the sanctions régime, on the potential economic, humanitarian and social impact on the Liberian population of the sanctions, and on any violations of the sanctions, and to report to the Council with its observations and recommendations.¹¹⁰ The Council also requested the Panel of Experts to bring information collected to the attention of the States concerned for prompt and thorough investigation and, where appropriate, to allow them the right of reply.¹¹¹

In January 2003, the Council decided to re-establish the Liberia Panel of Experts, for a period of three months.¹¹² The Panel would again consist of no more than five experts, drawing as much as possible upon the expertise of those who had served on the previous Panel.¹¹³ The re-established Panel would conduct a follow-up assessment mission to Liberia

¹⁰⁸ S/RES/1395 (27 February 2002), operative paragraph 4.

¹⁰⁹ S/RES/1408 (6 May 2002), operative paragraph 16.

¹¹⁰ *Ibid.*

¹¹¹ S/RES/1408 (6 May 2002), operative paragraph 17.

¹¹² S/RES/1458 (28 January 2003), operative paragraph 3.

¹¹³ S/RES/1458 (28 January 2003), operative paragraph 6.

and neighbouring States, in order to investigate and report on the Liberian Government's compliance with the Council's demands under the sanctions régime, as well as on any violations of the sanctions.¹¹⁴ The Panel would also conduct a review of the audits made of how the Liberian Government was utilizing its revenue from shipping and timber and would report to the Council with its observations and recommendations regarding those tasks.¹¹⁵ The Council again requested the Panel of Experts to bring information collected to the attention of the States concerned for prompt and thorough investigation and, where appropriate, to allow them the right of reply.¹¹⁶

In May 2003, the Council requested the Secretary-General to establish for a period of five months a Panel of Experts of up to six members. The Panel would undertake the following tasks: (a) Conducting a follow-up assessment mission to Liberia and neighbouring States, in order to investigate and report on the Liberian Government's compliance with the Council's demands under the sanctions régime, as well as on any violations of the sanctions;¹¹⁷ (b) Investigating whether any revenues of the Liberian Government were being used in violation of the sanctions régime;¹¹⁸ (c) Assessing the possible humanitarian and socio-economic impact of the logging sanctions and making recommendations through the 1343 Committee on how to minimize any such impact;¹¹⁹ and (d) Reporting to the Council through the Committee with its observations and recommendations on how to improve the

¹¹⁴ S/RES/1458 (28 January 2003), operative paragraph 4

¹¹⁵ *Ibid.*

¹¹⁶ S/RES/1458 (28 January 2003), operative paragraph 5.

¹¹⁷ S/RES/1478 (6 May 2003), operative paragraph 25(a).

¹¹⁸ S/RES/1478 (6 May 2003), operative paragraph 25(b).

¹¹⁹ S/RES/1478 (6 May 2003), operative paragraph 25(c).

effectiveness of implementing and monitoring the sanctions.¹²⁰ In addition, the Council again requested the Panel of Experts to bring information collected to the attention of the States concerned for prompt and thorough investigation and, where appropriate, to allow them the right of reply.¹²¹

Activities carried out by the Liberia Panel of Experts

In the course of its various mandates, the Liberia Panel of Experts submitted six reports to the Security Council.¹²² In its reports the Panel outlined detailed findings on the implementation and violation of the various components of the 1343 Liberia sanctions régime, as well as numerous recommendations for further action by the Security Council. In its *First report*, issued in October 2001, the Panel outlined extensive findings on: Liberia's role in destabilizing the region;¹²³ the relationship between transportation and the illicit flow of weapons, in violation of the Liberian arms embargo;¹²⁴ the sources of the Liberian

¹²⁰ S/RES/1478 (6 May 2003), operative paragraph 25(d).

¹²¹ S/RES/1478 (6 May 2003), operative paragraph 26.

¹²² S/2001/1015 (26 October 2001), enclosure: *Report of the Panel of Experts pursuant to Security Council resolution 1343 (2001), paragraph 19, concerning Liberia* (hereafter "*First report of the Panel of Experts on Liberia*"); S/2002/470 (19 April 2002), annex: *Report of the Panel of Experts appointed pursuant to Security Council resolution 1395 (2002), paragraph 4, in relation to Liberia* (hereafter "*Second report of the Panel of Experts on Liberia*"); S/2002/1115 (25 October 2002), annex: *Report of the Panel of Experts appointed pursuant to Security Council resolution 1408 (2002), paragraph 16, concerning Liberia* (hereafter "*Third report of the Panel of Experts on Liberia*"); S/2003/498 (24 April 2003), annex: *Report of the Panel of Experts appointed pursuant to paragraph 4 of Security Council resolution 1458 (2003), concerning Liberia* (hereafter "*Fourth report of the Panel of Experts on Liberia*"); S/2003/779 (7 August 2003), annex: *Report of the Panel of Experts established pursuant to paragraph 25 of resolution 1478 (2003) concerning Liberia* (hereafter "*Fifth report of the Panel of Experts on Liberia*"); and S/2003/937 (28 October 2003), annex: *Report of the Panel of Experts established pursuant to paragraph 25 of resolution 1478 (2003) concerning Liberia* (hereafter "*Sixth report of the Panel of Experts on Liberia*").

¹²³ *First report of the Panel of Experts on Liberia, ibid*, paragraphs 93-140.

¹²⁴ *Ibid*, paragraphs 141-308.

Government's revenue, as well as on the Government's expenditure,¹²⁵ and on the implementation of the travel sanctions.¹²⁶

In relation to Liberia's role in destabilizing the region, the Panel reported that the measure taken by the Liberian Civil Aviation Authority to address problems in the Liberian aircraft registry had been adequate and it recommended that the Security Council consider lifting its order that Liberia ground its aircraft and that it allow Liberia to reopen an aircraft register in coordination with the ICAO.¹²⁷ Referring to instances of aircraft registration fraud in the region, the Panel also recommended that the Council require aircraft owned, operated or insured by certain companies to be grounded immediately, until full records were provided for each aircraft and until each aircraft had been inspected by the Civil Aviation Authority in the country of registration.¹²⁸

In relation to the illicit flow of arms, the Panel recommended that: the arms embargo be extended; all Member States should abstain from supplying weapons to the Mano River Union countries; an arms embargo be imposed against armed non-state actors in the Mano River Union countries; and the ECOWAS moratorium on small arms should be broadened to provide an information exchange mechanism for a weapons procured by ECOWAS Member States.¹²⁹ The Panel also recommended that Member States investigate any arms transactions they had conducted involving particular companies, and that they inform any other State involved in the transaction, as well as the 1343 Sanctions Committee, of the

¹²⁵ *Ibid*, paragraphs 309-444.

¹²⁶ *Ibid*, paragraphs 445-459.

¹²⁷ *Ibid*, paragraphs 6, 300.

¹²⁸ *Ibid*, paragraphs 13-14, 304.

¹²⁹ *Ibid*, paragraphs 24-25, 305-306.

results of their investigations,¹³⁰ and that a United Nations working group be established to develop a standardized End-User Certificate for arms transactions.¹³¹

In relation to the Liberian Government's revenue and expenditure, the Panel noted that timber production was a source of revenue for "sanctions-busting" and recommended that the Liberian Government should commission an independent audit of its revenue from the timber industry and that the United Nations should impose a ban on all round log exports from Liberia.¹³² Referring to the diamond sanctions, the Panel encouraged Liberia to establish an effective Certificate of Origin scheme and echoed the recommendations made earlier by the Sierra Leone Panel of Experts that further international controls should be developed to ensure the effectiveness of Certificate of Origin schemes.¹³³ In relation to revenue derived from the Liberian shipping registry, the Panel recommended that steps should be taken to audit that revenue in order to ensure that it was being used for development purposes.¹³⁴

In relation to the travel sanctions, the Panel recommended that the 1343 Committee should respond more effectively to individual requests about the operation of the sanctions and that it should post a "travel ban web-page", explaining the criteria for placing names on the travel ban list, describing how individuals could apply for an exemption from the travel ban and listing exemptions that had been granted.¹³⁵ The Panel also recommended that a

¹³⁰ *Ibid*, paragraphs 26, 307.

¹³¹ *Ibid*, paragraphs 27, 308.

¹³² *Ibid*, paragraphs 40, 350.

¹³³ *Ibid*, paragraphs 48-49, 385-386.

¹³⁴ *Ibid*, paragraphs 59, 444.

¹³⁵ *Ibid*, paragraphs 62, 456.

photographic database be compiled of key individuals on the list, and that the list should be updated regularly.¹³⁶

The Panel also made some general recommendations for continued monitoring of the implementation of the 1343 Liberian sanctions régime, suggesting that an officer be employed within the United Nations Secretariat with responsibility for monitoring compliance with the sanctions,¹³⁷ and that the mandate of the Panel itself be renewed to enable it to undertake assessment missions to the region.¹³⁸

In its *Second report*, issued in April 2002, the Panel outlined findings in relation to: Liberia's internal conflict and the role of the RUF;¹³⁹ the link between air transportation and the illicit trade in arms;¹⁴⁰ the role of the diamond trade in the region;¹⁴¹ the sources of government revenue and expenditure;¹⁴² the travel sanctions;¹⁴³ and the impact of sanctions upon Liberia.¹⁴⁴

The Panel's recommendations were more limited in its second report. In relation to the implementation of the arms sanctions, the Panel reported that it had found credible evidence that the Liberian Government was continuing to violate the arms embargo. The Panel thus recommended that: (a) The arms embargo should be maintained and violations of the embargo should continue to be monitored;¹⁴⁵ (b) The ECOWAS moratorium on small

¹³⁶ *Ibid*, paragraphs 63-64, 457-458.

¹³⁷ *Ibid*, paragraphs 66, 463.

¹³⁸ *Ibid*, paragraphs 67-68, 464-465.

¹³⁹ *Second report of the Panel of Experts on Liberia*, above note 122, paragraphs 33-54.

¹⁴⁰ *Ibid*, paragraphs 55-101.

¹⁴¹ *Ibid*, paragraphs 102-137.

¹⁴² *Ibid*, paragraphs 138-157.

¹⁴³ *Ibid*, paragraphs 158-167.

¹⁴⁴ *Ibid*, paragraphs 168-176.

¹⁴⁵ *Ibid*, paragraphs 4, 71.

arms should be broadened to an information exchange mechanism for weapons of all types;¹⁴⁶ (c) All arms-producing and exporting countries should stop supplying weapons to the Mano River Union countries;¹⁴⁷ and (d) An immediate embargo should be imposed on all non-State actors in the Mano River Union countries, including on the dissident groups constituting the Liberians United for Reconciliation and Democracy (LURD).¹⁴⁸ In recommendations connected to the implementation of the arms embargo, but focussing upon the role of air transportation in violations of the embargo, the Panel recommended that: (a) Liberia be requested to supply the 1343 Committee with a full report detailing information on the recent crash of a plane believed to be engaged in violations of the embargo;¹⁴⁹ and (b) That an independent investigation be conducted into the crash in order to verify information to be provided by Liberia on the that crash.¹⁵⁰

In relation to the diamond sanctions, the Panel noted that the flow of export diamonds from Liberia had continued to be reduced due to the sanctions, but that diamonds were nevertheless continuing to be smuggled from Liberia in violation of the diamond sanctions.¹⁵¹ The Panel thus recommended that the United Nations should encourage Member States to assist the Liberian Government in setting up a credible and transparent certification scheme which was independently audited by an internationally recognized audit company.¹⁵² In relation to the travel sanctions, the Panel noted that a number of complaints had been received from listed individuals, requesting to know the grounds upon which they

¹⁴⁶ *Ibid*, paragraphs 4, 68-69.

¹⁴⁷ *Ibid*, paragraphs 4, 70.

¹⁴⁸ *Ibid*, paragraphs 4, 72.

¹⁴⁹ *Ibid*, paragraphs 6, 100.

¹⁵⁰ *Ibid*, paragraphs 7, 101.

¹⁵¹ *Ibid*, paragraph 9, 102-118, 136.

had been listed.¹⁵³ The Panel believed that the existing list was too long and “cumbersome” and it recommended that the list be reduced to include Liberian cabinet members and other key government officials, as well as those individuals identified by the Panel as having been involved in sanctions violations or having obstructed investigations into sanctions violations.¹⁵⁴

In comments on the impact of the 1343 Liberia sanctions régime, the Panel noted that there was a broad perception in Liberia that the sanctions were affecting average people, largely due to an effective public relations campaign against the sanctions by the Liberian Government.¹⁵⁵ The Panel suggested that the United Nations had not done a good job of defending the sanctions, nor of publicizing the scope of the sanctions or the findings of the Panel itself, and it recommended that further copies of the Panel’s reports be distributed in Liberia and that the United Nations Office in Liberia (UNOL) hold a series of workshops to balance the one-sided discussion of sanctions within Liberia.¹⁵⁶ The Panel did note, however, that the sanctions had caused “some collateral damage”, including: contributing to the significant depreciation of the Liberian dollar and a steep increase in inflation;¹⁵⁷ making it more difficult for international non-governmental organizations to receive funding from

¹⁵² *Ibid*, paragraphs 10, 137.

¹⁵³ *Ibid*, paragraph 13.

¹⁵⁴ *Ibid*.

¹⁵⁵ See, in general: *ibid*, paragraphs 168-176. One example of this campaign was the distribution of posters with a graphic of a skull and crossbones, stating: “Sanctions: Killing our Economy; Arms embargo: Killing our People; UN, UK, US: Liberian Children Deserve to Live”. A copy of the poster was included as annex IV to the Panel’s Second report.

¹⁵⁶ *Ibid*, paragraph 173.

¹⁵⁷ *Ibid*, paragraph 174.

donors for projects in Liberia,¹⁵⁸ and resulting in the World Bank suspending relations with Liberia until the sanctions had been lifted.¹⁵⁹

In its *Third report*, issued in October 2002, the Panel outlined findings in relation to: Liberia's internal conflict and regional instability;¹⁶⁰ the implementation of the arms embargo;¹⁶¹ civil aviation;¹⁶² the implementation of the diamond sanctions;¹⁶³ sources of government revenue and expenditure;¹⁶⁴ and the travel sanctions.¹⁶⁵ The Panel also outlined observations in relation to the humanitarian impact of the sanctions régime.¹⁶⁶

The Panel's recommendations in its third report were again more limited. In relation to the arms embargo, the Panel recommended that: (a) The arms embargo be maintained and that violations continue to be monitored;¹⁶⁷ (b) The arms embargo be extended to all armed non-State actors in the region, including LURD and that arms-exporting countries should stop supplying arms to the Mano River Union countries;¹⁶⁸ (c) A United Nations working group be established, in order to develop the modalities for a standardized end-user certificate that would contain a minimum collection of details relating to the authority

¹⁵⁸ *Ibid*, paragraph 175.

¹⁵⁹ *Ibid*, paragraph 176.

¹⁶⁰ *Third report of the Panel of Experts on Liberia*, above note 122, paragraphs 44-58.

¹⁶¹ *Ibid*, paragraphs 59-108.

¹⁶² *Ibid*, paragraphs 109-123.

¹⁶³ *Ibid*, paragraphs 124-157.

¹⁶⁴ *Ibid*, paragraphs 158-196.

¹⁶⁵ *Ibid*, paragraphs 197-204.

¹⁶⁶ For the Panel's comments on the humanitarian impact of the sanctions, see: *ibid*, paragraphs 19-22 (on the humanitarian impact of the sanctions régime in general), 96-99 (on the humanitarian impact of the arms embargo), 138-143 (on the humanitarian impact of the diamond sanctions), 162-171 (on the potential humanitarian impact of the proposed sanctions against the shipping and logging industries), 201-204 (on the humanitarian impact of the travel sanctions).

¹⁶⁷ *Ibid*, paragraphs 8, 100.

¹⁶⁸ *Ibid*, paragraph 8.

issuing the certificate;¹⁶⁹ (d) The ECOWAS/PCASED moratorium be used more effectively to monitor and combat illicit trafficking and “sanctions-busting”;¹⁷⁰ (e) End-user certificates be submitted to ECOWAS as part of the procedure to obtain waivers for the import of arms into West Africa;¹⁷¹ and (f) The moratorium should be broadened and should become an information exchange mechanism for all types of weapons procured by ECOWAS members.¹⁷²

In relation to civil aviation, the Panel recommended that: (a) The Liberian civil aviation authorities should ensure that its aircraft were registered under the new Liberian prefix (A8) as soon as possible, so that aircraft could no longer operate under the old prefix (EL);¹⁷³ and (b) Liberia should investigate fully, and present to the 1343 Committee within three months its findings on, the incident referred to in the Panel’s second report, in which an aircraft suspected of having been involved in violations of the arms embargo had crashed.¹⁷⁴ In relation to the implementation of the diamond sanctions, the Panel recommended that Liberia should finalize a credible plan of action for introducing a credible certification of origin scheme, with the aid of international support.¹⁷⁵

In relation to the revenue and expenditure of the Liberian Government, the Panel recommended that the Government publish the results of the systems audit being conducted by the international auditing firm Deloitte & Touche of the revenue derived from the maritime

¹⁶⁹ *Ibid*, paragraphs 8, 101.

¹⁷⁰ *Ibid*, paragraphs 8, 102.

¹⁷¹ *Ibid*, paragraphs 9, 104.

¹⁷² *Ibid*, paragraphs 9, 105.

¹⁷³ *Ibid*, paragraphs 10, 122.

¹⁷⁴ *Ibid*, paragraphs 12, 123.

¹⁷⁵ *Ibid*, paragraphs 14-15, 157.

and forestry industries, as well as of the expenditures made with that revenue.¹⁷⁶ On the subject of the humanitarian impact of the sanctions, the Panel concluded that the sanctions had had a negligible impact on the humanitarian situation in Liberia.¹⁷⁷ As in its second report, the Panel noted that sanctions had had a psychological impact upon the Liberian civilian population and that the Liberian Government had used the imposition of the sanctions as an excuse for its failure to improve services and to engage in reform.¹⁷⁸

In its *Fourth report*, issued in April 2003, the Panel outlined findings in relation to: Liberia's internal conflict and regional instability;¹⁷⁹ the implementation of the arms embargo;¹⁸⁰ civil aviation;¹⁸¹ the implementation of the diamond sanctions;¹⁸² sources of government revenue and expenditure;¹⁸³ and the travel sanctions.¹⁸⁴ The Panel again made fewer recommendations than in earlier reports, including that: (a) The ECOWAS/PCASD moratorium on the import, export and manufacturing of small arms in West Africa should be strengthened through international assistance and technical support; (b) An international mechanism be established to harmonize and verify all end-user certificates for weapons; (c) The Liberian Civil Aviation Authority should cooperate fully with its responsibilities and should register all of its aircraft; (d) International mining and geological consultants should be engaged in order to define which areas should be classified as "conflict free", such that

¹⁷⁶ *Ibid*, paragraphs 17, 196.

¹⁷⁷ *Ibid*, paragraph 19.

¹⁷⁸ *Ibid*, paragraphs 21-22.

¹⁷⁹ *Fourth report of the Panel of Experts on Liberia*, above note 122, paragraphs 33-68.

¹⁸⁰ *Ibid*, paragraphs 69-113.

¹⁸¹ *Ibid*, paragraphs 114-124.

¹⁸² *Ibid*, paragraphs 125-147.

¹⁸³ *Ibid*, paragraphs 148-164.

¹⁸⁴ *Ibid*, paragraphs 165-169.

diamonds from those locations might be considered fit for export; and (e) Financial sanctions should be imposed against certain individuals.¹⁸⁵

In August 2003 the Liberia II Panel of Experts submitted its *Fifth report*, containing observations and recommendations on the possible humanitarian and socio-economic impact of the timber sanctions.¹⁸⁶ The Panel's methodology for analysing the humanitarian and socio-economic impact of the timber sanctions focussed upon assessing the impact of the timber sanctions upon seven factors: (1) revenue and taxes; (2) employment; (3) indirect benefits; (4) social services; (5) human rights; (6) investment; and (7) environment.¹⁸⁷ The Panel's observations included that the sanctions would: (a) deprive armed State and non-State actors of timber revenue; (b) result in decreased human rights violations associated with the timber industry; and (c) cause long-term consequences for the Liberia's redevelopment.¹⁸⁸ Its recommendations included that: (a) the Council should impose a moratorium on all commercial activities in the extractive industries; (b) increased emergency aid should be provided; (c) the Liberian timber sector should be reformed in order to achieve good governance; and (d) Member States, civil society and U.N. field presences should be encouraged to monitor and report sanctions violations.¹⁸⁹

¹⁸⁵ *Ibid*, paragraph 10.

¹⁸⁶ S/2003/779 (7 August 2003), annex: *Report of the Panel of Experts pursuant to paragraph 25 of Security Council resolution 1478 (2003) concerning Liberia* (hereafter "*Fifth report of the Liberia II Panel of Experts*").

¹⁸⁷ See: *Fifth report of the Panel*, *ibid*, paragraphs 7-14.

¹⁸⁸ See: *Fifth Report of the Panel*, *ibid*, paragraph 15.

¹⁸⁹ See: *Fifth Report of the Panel*, *ibid*, paragraph 17.

In October 2003 the Panel submitted its sixth and final report.¹⁹⁰ In its *Sixth report*, the Panel outlined observations and recommendations relating to the arms, diamonds, timber and travel sanctions. In its observations on the arms sanctions, the Panel noted that porous borders and insecurity in neighbouring countries had made the full enforcement of the arms embargo impossible and that only one shipment of arms had been blocked.¹⁹¹ With respect to the diamond sanctions, insecurity and seasonal climactic factors had led to a decline in diamond production, but diamonds were continuing to flow on to the international market and existing certification schemes in neighbouring countries were failing to prevent such flows.¹⁹² In connection with the timber sanctions, the Panel noted that there had been few violations, but that that was likely due to war and the rainy season – the test would come in November 2003, when conflict was expected to decrease and the rain to abate.¹⁹³ Referring to humanitarian and socio-economic impact, the Panel noted that the Liberian economy would suffer the loss of no less than 50 per cent of its export income as a result of the timber sanctions.¹⁹⁴ With respect to the travel sanctions, the Panel noted that the ban was being violated consistently, with a number of people on the travel black-list having been seen or contacted outside Liberia.¹⁹⁵

The recommendations outlined by the Panel included: (a) That all sanctions should be maintained;¹⁹⁶ (b) That the United Nations Mission in Liberia (UNMIL) should play a

¹⁹⁰ S/2003/937 (28 October 2003), annex: *Report of the Panel of Experts pursuant to paragraph 25 of Security Council resolution 1478 (2003) concerning Liberia* (hereafter “*Sixth report of the Liberia II Panel of Experts*”).

¹⁹¹ *Ibid*, paragraphs 9(b)-(c).

¹⁹² *Ibid*, paragraphs 9(d), 130-40.

¹⁹³ *Ibid*, paragraphs 9(g), 147-8.

¹⁹⁴ *Ibid*, paragraph 8.

¹⁹⁵ *Ibid*, paragraphs 9(i), 175-80.

¹⁹⁶ *Ibid*, paragraphs 10(a), 157.

monitoring role to ensure that sanctions were not being violated;¹⁹⁷ (c) That financial sanctions should be imposed against all accounts, assets and property owned and controlled by Charles Taylor;¹⁹⁸ (d) That the diamond sanctions should remain in place until a closely monitored, internationally accredited certification scheme could be effectively implemented within the context of broad sector reform;¹⁹⁹ (e) That the Liberian forestry sector should be reformed under standards of good governance;²⁰⁰ and (f) That a national “sensitization campaign” should be launched to inform Liberians about the justification for sanctions.²⁰¹

18.5 Termination of the Liberia II sanctions régime

In December 2003, just over two and a half years after it initiated its second sanctions régime against Liberia, and three months after Charles Taylor had resigned as Liberian President and had departed Liberia to take refuge in Nigeria, the Security Council terminated the 1343 sanctions régime and replaced it with a third Liberian sanctions régime. In the process, the Council recalled the various resolutions associated with the 1343 sanctions régime,²⁰² and noted that the changed circumstances in Liberia, including the departure of former President Taylor and the formation of the National Transitional Government of Liberia, required the revision of its determination for action under Chapter

¹⁹⁷ *Ibid*, paragraphs 10(b), 110.

¹⁹⁸ *Ibid*, paragraph 10(d).

¹⁹⁹ *Ibid*, paragraphs 10(e), 142.

²⁰⁰ *Ibid*, paragraphs 10(g), 159.

²⁰¹ *Ibid*, paragraph 10(h).

²⁰² S/RES/1521 (22 December 2003), section A, preambular paragraph 1.

VII in order to reflect altered circumstances.²⁰³ It then decided to terminate the second Liberian sanctions régime and dissolved the 1343 Committee.²⁰⁴

18.6 Notable aspects of the Liberia II sanctions régime

The second Liberia sanctions régime was noteworthy in a number of respects. First, it was the first sanctions régime that was imposed to succeed an earlier sanctions régime against the same target.²⁰⁵ Second, it constituted the first time that the Security Council imposed mandatory sanctions against logging. Third, it represented another instance, along with those of the sanctions régimes against Ethiopia and Eritrea, Sierra Leone and the Taliban/Al Qaida, in which the Council utilized time-limits in the application of sanctions.²⁰⁶ Fourth, the Council again experimented with time-delays in order to provide the target with an opportunity to avoid the eventual application of the sanctions by complying with the

²⁰³ S/RES/1521 (22 December 2003), section A, preambular paragraph 2.

²⁰⁴ S/RES/1521 (22 December 2003), operative paragraph 1.

²⁰⁵ Although the Council has acted in other sanctions régimes to terminate the existing sanctions and reimpose new sanctions [see, e.g., the Sierra Leone sanctions régime: section 14.3, above], in the case of Liberia the Council actually terminated the whole sanctions régime and dissolved the existing Sanctions Committee, before applying a completely new sanctions régime against the same target and establishing a new Sanctions Committee.

²⁰⁶ The arms sanctions applied for an initial period of fourteen months [S/RES/1343 (7 March 2001), operative paragraphs 5, 9], which has subsequently been extended for two further periods of twelve months [S/RES/1408 (6 May 2002), operative paragraph 5; S/RES/1478 (6 May 2003), operative paragraph 10]. The diamond and travel sanctions, which came into effect two months after the application of the arms sanctions, were applied for an initial period of twelve months [S/RES/1343 (7 March 2001), operative paragraphs 6, 7, 8], which has subsequently been extended for two further periods of twelve months [S/RES/1408 (6 May 2002), operative paragraph 5; S/RES/1478 (6 May 2003), operative paragraph 10]. The logging sanctions, have been applied for an initial period of ten months, beginning on 6 July 2003 [S/RES/1478 (6 May 2003), operative paragraph 17]. Interestingly, the Council did not set a time-limit for the additional travel sanctions applied in May 2003: S/RES/1478 (6 May 2003), operative paragraph 28. It is questionable, however, whether the relevant provisions in and of themselves would result in the termination of the sanctions at the end of the time-period specified. The provisions state that the relevant sanctions would terminate after the stipulated period if the Council decides that the Liberian Government had complied with the conditions of the sanctions régime.

necessary conditions under the sanctions régime.²⁰⁷ Fifth, as noted above, the Security Council adopted a flexible approach to the characterization of the relevant threat to international peace and security, first characterizing that threat as the active support provided by the Liberian Government for armed rebel groups in neighbouring countries, and in particular for the RUF in Sierra Leone,²⁰⁸ then characterizing it as the active support provided by the Liberian Government for armed rebel groups in the region, including the RUF,²⁰⁹ then again as the active support provided by the Liberian Government for armed rebel groups in the region, including to rebels in Côte d'Ivoire and former RUF combatants who continued to destabilize the region.²¹⁰ Sixth, the Council bestowed responsibilities relating to the implementation of the sanctions upon a range of actors, including the Secretary-General, the 1343 Committee, and a Panel of Experts on Liberia. Seventh, the Council experimented for the first time with the idea of requiring an audit of the revenue and expenditure of a target, in order to determine whether the revenue was being spent in a manner that did not violate the sanctions. Finally, the Council demonstrated a particular interest in the humanitarian impact of the sanctions, requesting substantial reporting on the matter.

²⁰⁷ Interestingly, the Council employed a mixture of immediate operation and time-delays in its application of the 1343 Liberia sanctions régime. The arms sanctions came into effect immediately, whilst the diamond and travel sanctions entered into force two months later: S/RES/1343 (7 March 2001), operative paragraphs 8, 9. See also: *First report of the 1343 Committee*, above note 44, paragraphs 16, 17. See also SC/7058 (4 May 2001): *Statement to the media by the President of the Security Council* [noting that the diamond and travel sanctions subsequently came into effect after the Council considered the matter during consultations on 4 May 2001, when the members of the Council decided that the steps taken by the Liberian Government had not been sufficient to postpone the application of those additional sanctions]. Similarly, when the Council established the logging sanctions and imposed additional travel sanctions, the logging sanctions were to come into effect two months later, whilst the travel sanctions entered into force immediately: S/RES/1478 (6 May 2003), operative paragraphs 17, 28.

²⁰⁸ S/RES/1343 (7 March 2001), preambular paragraph 8.

²⁰⁹ S/RES/1408 (6 May 2002), preambular paragraph 11.

²¹⁰ S/RES/1478 (6 May 2003), preambular paragraph 13.

19. *The sanctions régime against certain actors in the Democratic Republic of the Congo*

The Security Council imposed sanctions against certain actors in the Kivu and Ituri regions of the Democratic Republic of the Congo (DRC) in July 2003, in an attempt to foster progress in the DRC peace process. The sanctions, which were imposed for an initial period of twelve months, consist of an arms embargo. The sanctions remain in place at the time of writing.

19.1 The constitutional basis for imposing the DRC sanctions régime

After a number of years of taking action to address the situation in the DRC,¹ the Security Council eventually imposed sanctions against certain actors in the DRC in July 2003. At that time, the Council welcomed the conclusion of the Global and All Inclusive Agreement on the Transition in the DRC,² whilst expressing deep concern at the continuation of hostilities in the eastern part of the DRC, particularly in North and South Kivu and Ituri, and by the grave violations of human rights and international humanitarian law that accompanied those hostilities.³ The Council then noted that the situation in the DRC continued to constitute a threat to international peace and security in the region,⁴ and stated that it was acting under Chapter VII of the Charter,⁵ before imposing the sanctions.⁶

¹ S/RES/1493 (28 July 2003), preambular paragraph 11. The Council had originally made a determination of a threat to the peace an early resolution relating to the mandate of the United Nations Organization Mission in the DRC (MONUC). See: S/RES/1291, preambular paragraph 20 (determining that the situation in the DRC constituted a threat to international peace and security in the region).

² S/RES/1493 (28 July 2003), preambular paragraph 5.

³ S/RES/1493 (28 July 2003), preambular paragraph 6.

⁴ S/RES/1493 (28 July 2003), preambular paragraph 11.

⁵ S/RES/1493 (28 July 2003), preambular paragraph 12.

19.2 The objectives of the DRC sanctions régime

The broad objective of the sanctions was to foster progress in the DRC peace process.⁷ The Council noted that it would review the situation in the DRC in twelve months, with a view to renewing the sanctions if no significant progress had been made in the peace process, including in particular if support were still being provided to armed groups, if there were no effective ceasefire, and if there had not been progress in the disarmament, demobilization, repatriation, reintegration or resettlement (“DDRRR”) of foreign and Congolese armed groups.⁸

19.3 The scope of the DRC sanctions régime

Under the DRC sanctions régime, all States were initially required to take the necessary measures to prevent the supply of arms and related *matériel* and the provision of military assistance, advice or training to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, as well as to groups not party to the Global and all-inclusive agreement, in the DRC.⁹ Exempt from the sanctions, however, are supplies to MONUC, the Interim Emergency Multinational Force led by France, and non-lethal military equipment intended for humanitarian or protective use, as well as related technical assistance and training.¹⁰

⁶ S/RES/1493 (28 July 2003), operative paragraph 20. For details on the scope of the sanctions régime, see section 19.3, below.

⁷ See: S/RES/1493 (28 July 2003), operative paragraph 22 (in general).

⁸ *Ibid.*

⁹ S/RES/1493 (28 July 2003), operative paragraph 20.

¹⁰ S/RES/1493 (28 July 2003), operative paragraph 21. In order to be exempt, such training and assistance had to be notified in advance to the Secretary-General and his Special Representative [see also operative paragraph 21].

19.4 The administration, monitoring and enforcement of the DRC sanctions régime

When it first imposed the DRC sanctions régime, the Council did not establish a Sanctions Committee. Initially it bestowed responsibilities relating to the administration and monitoring of the sanctions upon the Secretary-General and the United Nations Organization Mission in the DRC (MONUC). The Council has subsequently established both a Sanctions Committee and a Group of Experts, whilst also reaffirming MONUC's monitoring role.

19.4.1 The Secretary-General

When the Council established the DRC sanctions régime it requested the Secretary-General to play an administering role by receiving notifications from States who wished to take advantage of the exemption for the provision of technical assistance and training for humanitarian or protective non-lethal military equipment.¹¹

19.4.2 The United Nations Organization Mission in the DRC (MONUC)

When the Council established the DRC sanctions régime, it requested MONUC to deploy military observers in North and South Kivu and in Ituri and to report to it regularly on information concerning arms supply and the presence of foreign military.¹² In March 2004 the Council expanded MONUC's sanctions monitoring role, requesting it to use all means to inspect the cargo of aircraft and any transport vehicle using the ports, airports, military bases and border crossings in North and South Kivu and in Ituri.¹³ At the same time,

¹¹ S/RES/1493 (28 July 2003), operative paragraph 21.

¹² S/RES/1493 (28 July 2003), operative paragraph 19.

¹³ S/RES/1533 (12 March 2004), operative paragraph 3.

the Council also authorized MONUC to seize arms and related matériel violating the DRC sanctions.¹⁴

19.4.3 The DRC Sanctions Committee

In March 2004, ten months after it had initiated the DRC sanctions régime, the Council established a Sanctions Committee to oversee the sanctions administration.¹⁵ The 1533 Committee's mandate included: (a) seeking from all States information regarding action taken to implement the sanctions;¹⁶ (b) taking appropriate action on alleged sanctions violations as contained in the reports of the Panel of Experts on the Illegal Exploitation of Natural Resources in the DRC;¹⁷ (c) presenting regular observations and recommendations to the Council on its work, including on strengthening the sanctions;¹⁸ (d) considering lists to be compiled of sanctions violators, with a view to making recommendations for future measures to be taken in that regard;¹⁹ and (e) receiving notifications from States concerning exemptions.²⁰

19.4.4 The DRC Group of Experts

In March 2003 the Security Council requested the Secretary-General to establish for a period of approximately three months a Group of Experts on the DRC sanctions.²¹ The mandate of the Group, which was to consist of no more than four experts, included: (a) analysing information gathered by the United Nations Organization Mission in the DRC

¹⁴ S/RES/1533 (12 March 2004), operative paragraph 4.

¹⁵ S/RES/1533 (12 March 2004), operative paragraph 8.

¹⁶ S/RES/1533 (12 March 2004), operative paragraph 8(a), 9.

¹⁷ S/RES/1533 (12 March 2004), operative paragraph 8(b).

¹⁸ S/RES/1533 (12 March 2004), operative paragraph 8(c).

¹⁹ S/RES/1533 (12 March 2004), operative paragraph 8(d).

²⁰ S/RES/1533 (12 March 2004), operative paragraph 8(e).

(MONUC) regarding the implementation of the sanctions;²² (b) gathering and analysing information gathered in the DRC and other countries regarding the flow of arms and related matériel, as well as on networks operating in violations of the sanctions;²³ (c) recommending measures to improve the capacity of States to implement the sanctions;²⁴ (d) reporting to the Council with recommendations and through the 1533 Committee on the implementation of the sanctions;²⁵ (e) keeping the 1533 Committee abreast of its activities;²⁶ (f) exchanging with MONUC information that would facilitate MONUC's monitoring mandate;²⁷ and (g) providing the 1533 Committee with a list of individuals who had violated the sanctions, as well as of those who had supported those individuals.²⁸ The DRC Group of Experts was due to submit its first report in July 2004.

19.4.5 States

In March 2004, the Council requested all States, and in particular those in the region, to report to the 1533 Committee on action taken to implement the sanctions.²⁹ At the same time, the Council also urged all States to cooperate fully with the 1533 Committee, the DRC Group of Experts and MONUC.³⁰

²¹ S/RES/1533 (12 March 2004), operative paragraph 10.

²² S/RES/1533 (12 March 2004), operative paragraph 10(a).

²³ S/RES/1533 (12 March 2004), operative paragraph 10(b).

²⁴ S/RES/1533 (12 March 2004), operative paragraph 10(c).

²⁵ S/RES/1533 (12 March 2004), operative paragraph 10(d).

²⁶ S/RES/1533 (12 March 2004), operative paragraph 10(e).

²⁷ S/RES/1533 (12 March 2004), operative paragraph 10(f).

²⁸ S/RES/1533 (12 March 2004), operative paragraph 10(g).

²⁹ S/RES/1533 (12 March 2004), operative paragraph 9.

³⁰ S/RES/1533 (12 March 2004), operative paragraph 12.

19.5 Notable aspects of the DRC sanctions régime

One notable aspect of the DRC sanctions régime is the manner in which the Security Council has again adopted a time-limit in the application of sanctions. Another is the fact that the Council seemed to employ a minimalist approach by opting not to establish subsidiary bodies to oversee the administration, monitoring or enforcement of the sanctions. The Council has subsequently changed track quite forcefully on that aspect, establishing both a Sanctions Committee and a Group of Experts and strengthening MONUC's monitoring and enforcement responsibilities. It was important for the Council take such steps, as the DRC sanctions régime targets a class of actors, the identification of whom requires substantial administrative and monitoring follow-up. In the absence of a clear determination of which individuals were associated with the targeted actors, it would have been unclear to States which actors should be the target of the sanctions. Now that the Council has established both a Sanctions Committee and a Group of Experts, with responsibility for compiling a concrete list of actors against which the sanctions must be applied and receiving reports from States outlining steps taken to implement the sanctions, it is more likely that attention will be focused upon implementing the sanctions effectively. It is fortunate that the Council decided – even if belatedly – to strengthen the monitoring and implementation of the DRC sanctions. If it had not done so, the DRC sanctions régime may have turned out to be an example of how not to apply sanctions.

20. The third Liberia sanctions régime (“Liberia III”)

In December 2003, in the same resolution by which it had terminated the second sanctions régime imposed against Liberia, by resolution 1343 (2001), the Security Council for the second time took the unusual step of imposing a new sanctions régime against Liberia.¹ The 1521 sanctions régime has a number of objectives, including: securing the observance of a ceasefire and the implementation of the Comprehensive Peace Agreement of 18 August 2003; bringing about the establishment of an effective Certificate of Origin régime for trade in Liberian diamonds; and ensuring that the Transitional Government of Liberia gains full authority and control over Liberian timber producing areas and that government revenues from the timber industry are used for the benefit of the Liberian people.

20.1 The constitutional basis for imposing the Liberia III sanctions régime

When the Security Council established the Liberia III sanctions régime, it expressed serious concern at the recent findings of the Liberia Panel of Experts that the 1343 sanctions continued to be breached, particularly via the flow into Liberia of arms.² Whilst welcoming the Comprehensive Peace Agreement signed by the former Government of Liberia, Liberians United for Reconciliation and Democracy (LURD) and the Movement for

¹ For details relating to the earlier two sanctions régimes against Liberia, see sections 5.8 and 5.18, above.

² S/RES/1521 (22 December 2003), preambular paragraph 3. For those findings by the Panel, see: S/2003/779 (7 August 2003), annex: *Report of the Panel of Experts established pursuant to paragraph 25 of resolution 1478 (2003) concerning Liberia*; and S/2003/937 (28 October 2003), annex: *Report of the Panel of Experts established pursuant to paragraph 25 of resolution 1478 (2003) concerning Liberia*.

Democracy in Liberia (MODEL),³ the Council noted with concern that the ceasefire and the Comprehensive Peace Agreement were not being implemented throughout Liberia.⁴ It then determined that the situation in Liberia and the proliferation of arms and armed non-State actors, including mercenaries in the subregion continued to constitute a threat to international peace and security in West Africa, in particular to the peace process in Liberia,⁵ and noted that it was acting under Chapter VII of the Charter,⁶ before proceeding to apply sanctions.⁷

In March 2004, the Council noted with concern that the actions and policies of former Liberian President Charles Taylor and other persons, in particular depleting Liberian resources and removing from Liberia funds and property, had undermines Liberia's transition to democracy.⁸ It further expressed concern that former President Taylor continued to exercise control over and to access misappropriated Liberian funds and property,⁹ determined that the situation constituted a threat to international peace and security in West Africa, in particular to the peace process in Liberia,¹⁰ and, acting under Chapter VII,¹¹ imposed financial sanctions against former President Taylor and his immediate family and former senior colleagues.¹²

³ S/RES/1521 (22 December 2003), preambular paragraph 4.

⁴ S/RES/1521 (22 December 2003), preambular paragraph 6.

⁵ S/RES/1521 (22 December 2003), preambular paragraph 8.

⁶ S/RES/1521 (22 December 2003), preambular paragraph 9.

⁷ S/RES/1521 (22 December 2003), operative paragraphs 2, 4, 6, 10.

⁸ S/RES/1532 (12 March 2004), preambular paragraph 2.

⁹ S/RES/1532 (12 March 2004), preambular paragraph 4.

¹⁰ S/RES/1532 (12 March 2004), preambular paragraph 5.

¹¹ S/RES/1532 (12 March 2004), preambular paragraph 6.

¹² S/RES/1532 (12 March 2004), operative paragraph 1.

20.2 The objectives of the Liberia III sanctions régime

With the establishment of the 1521 sanctions régime, the Security Council took the innovative step of outlining particular objectives linked to different components of the sanctions régime. Thus the objectives of the arms and travel sanctions were to ensure that: the Liberian ceasefire was being fully respected and maintained; disarmament, demobilization, reintegration, repatriation and restructuring of the security sector had been completed; the provisions of the Comprehensive Peace Agreement were being fully implemented; and that significant progress had been made in establishing and maintaining stability in Liberia and the subregion.¹³ The objective of the diamond sanctions was to ensure the establishment of an effective Certificate of Origin régime for trade in Liberian diamonds.¹⁴ Finally, the objective of the timber sanctions were to ensure that: the Transitional Government of Liberia gained full authority and control over Liberian timber producing areas; and that government revenues from the timber industry were not being used to fuel conflict or in violation of the Security Council's resolutions, but rather that they were being used for legitimate purposes for the benefit of the Liberian people.¹⁵

20.3 The scope of the Liberia III sanctions régime

The 1521 sanctions régime initially consisted of a mixture of arms, travel, diamond and timber sanctions. Under the arms sanctions, all States were required to prevent the sale or supply to Liberia of arms and related *matériel* and equipment, as well as the provision to Liberia of training or assistance related to the provision, manufacture or use of arms and

¹³ S/RES/1521 (22 December 2003), operative paragraph 5.

¹⁴ S/RES/1521 (22 December 2003), operative paragraph 8.

¹⁵ S/RES/1521 (22 December 2003), operative paragraphs 11, 12.

related *matériel* and equipment.¹⁶ Under the travel sanctions, all States were required to prevent the entry into or transit through their territories of all persons who constituted a threat to the peace process in Liberia, including senior members of the former Liberian Government and armed forces, as well as the spouses of those individuals and any other individuals providing financial or military support to rebel groups in countries neighbouring Liberia.¹⁷ Under the diamond sanctions, all States were required to prevent the direct or indirect import of all rough diamonds from Liberia, whether or not those diamonds originated in Liberia.¹⁸ Under the timber sanctions, all States were required to prevent the import into their territories of all round logs and timber products originating in Liberia.¹⁹

In March 2004, the Council strengthened the Liberia III sanctions régime, imposing financial sanctions against former Liberian President Charles Taylor and members of his immediate family and senior officials of his former Government.²⁰

¹⁶ S/RES/1521 (22 December 2003), operative paragraph 2. Exemptions were provided from the arms sanctions for: UNMIL; and international training and reform programme for the Liberian armed forces and police; non-lethal military equipment intended solely for humanitarian or protective use; and protective clothing for United Nations personnel, representatives of the media and humanitarian and develop workers: S/RES/1521 (22 December 2003), operative paragraph 2(d)-(f).

¹⁷ S/RES/1521 (22 December 2003), operative paragraph 4(a). In that provision the Council also clarified that nothing obliged a State to refuse entry to its own nationals. The Council further provided for the possibility of exemptions from the travel sanctions where the 1521 Committee determined that travel was justified on the grounds of humanitarian need or religious obligation, or where it would further the objectives of the Council's resolutions for the creation of peace, stability and democracy in Liberia and lasting peace in the subregion: S/RES/1521 (22 December 2003), operative paragraph 4(c).

¹⁸ S/RES/1521 (22 December 2003), operative paragraph 6.

¹⁹ S/RES/1521 (22 December 2003), operative paragraph 10.

²⁰ S/RES/1532 (12 March 2004), operative paragraph 1. The Council provided for the possibility of exemptions from the financial sanctions where necessary for: basic expenses (operative paragraph 2(a)); extraordinary expenses (operative paragraph 2(b)); or due to the fact that it was subject to legal or administrative lien (operative paragraph 2(c)). The Council also decided that States might allow for frozen accounts to receive outstanding interest or other payments owed prior to the application of the financial sanctions: operative paragraph 3.

20.4 The administration, monitoring and enforcement of the Liberia III sanctions régime

The Security Council bestowed responsibilities for the administration, implementation and enforcement of the 1521 Liberia sanctions régime upon a range of actors, including a sanctions committee, a Panel of Experts, the Secretary-General, and the United Nations Mission in Liberia (UNMIL).

20.4.1 The 1521/Liberia III Committee

The Security Council established the 1521 Liberia Sanctions Committee (the “1521 Committee” or the “1521 Liberia Committee”) in the same resolution which imposed the new sanctions régime against Liberia.²¹

As part of its mandate, the new Committee was tasked with reporting to the Council on its work and with its observations and recommendations, and: (a) Monitoring the implementation of the sanctions, taking into consideration the reports of the Panel of Experts also established by resolution 1521 (2003);²² (b) Seeking from all States, particularly those in the subregion, information regarding the actions taken by them to implement the sanctions;²³ (c) Deciding upon requests for the various exemptions outlined from the sanctions;²⁴ (d) Designating the individuals subject to the travel sanctions and updating that list regularly;²⁵ (e) Making relevant information, including the list of individuals subject to the travel sanctions, publicly available through appropriate media;²⁶ and (f) Considering and

²¹ S/RES/1521 (22 December 2003), operative paragraph 21.

²² S/RES/1521 (22 December 2003), operative paragraph 21(a).

²³ S/RES/1521 (22 December 2003), operative paragraph 21(b).

²⁴ S/RES/1521 (22 December 2003), operative paragraph 21(c).

²⁵ S/RES/1521 (22 December 2003), operative paragraph 21(d).

²⁶ S/RES/1521 (22 December 2003), operative paragraph 21(e).

taking appropriate action on information brought to its attention concerning any alleged violations of the 1343 sanctions régime imposed against Liberia, whilst that sanctions régime had been in force.²⁷

In March 2004 the Council, when the Council applied financial sanctions against former President Taylor and his family members and associates, it also added to the 1521 Committee's responsibilities. The Committee was thus requested to undertake the following additional tasks: (g) identifying individuals and entities subject to financial sanctions, circulating that list to all States, and posting it on the Committee's website;²⁸ (h) maintaining and updating the list;²⁹ (i) assisting States, where necessary, in tracing and freezing the funds and other financial and economic resources subject to the financial sanctions;³⁰ and (j) seeking from all States information regarding the actions taken by them to trace and freeze such funds and other financial and economic resources.³¹

20.4.2 The Secretary-General

When the Security Council initiated the 1521 Liberia sanctions régime, it requested the Secretary-General to report to it on progress made towards achieving the sanctions régime's objectives.³² At the same time, it also requested him to establish, for a period of five months, a Panel of Experts to investigate the implementation of the 1521 Liberia

²⁷ S/RES/1521 (22 December 2003), operative paragraph 21(f). The Council's decision to ask the 1521 Committee to assume responsibilities relating to the 1343 sanctions régime raised the same legal issues that had arisen when the Council requested the 1343 Committee to consider information relating to violations of the first Liberia sanctions régime. For discussion, see sections 18.4 and 18.6, above.

²⁸ S/RES/1532 (12 March 2004), operative paragraph 4(a).

²⁹ S/RES/1532 (12 March 2004), operative paragraph 4(b).

³⁰ S/RES/1532 (12 March 2004), operative paragraph 4(c).

³¹ S/RES/1532 (12 March 2004), operative paragraph 4(d).

³² S/RES/1521 (22 December 2003), operative paragraph 26.

sanctions régime.³³ In June 2004 the Council further requested the Secretary-General to appoint no more than five experts to the re-established Liberia III Panel of Experts, as well as to make the necessary financial arrangements to support the Panel's work.³⁴

20.4.3 States

When the Council initiated the Liberia III sanctions régime, it demanded that all States in West Africa take action to prevent armed individuals and groups from using their territory to prepare and commit attacks on neighbouring countries and to refrain from any action that might contribute to further destabilization of the situation in the subregion.³⁵ At the same time it also called upon States, relevant international organizations and others in a position to do so to offer assistance to the National Transitional Government of Liberia (NTGL) in achieving the objectives of the sanctions, including the establishment of an effective certificate of origin régime for diamonds, the establishment of NTGL control over timber producing areas and the establishment of oversight mechanisms for the Liberian timber industry to ensure that all Government revenues were used for legitimate purposes and not to fuel conflict or otherwise to violate the Council's resolutions.³⁶

In June 2004, when the Council re-established the Liberia III Panel of Experts, it urged all States, relevant United Nations bodies and other organizations and interested parties to cooperate fully with the 1521 Committee.³⁷

³³ S/RES/1521 (22 December 2003), operative paragraph 22. For details relating to the mandate and activities of the Panel of Experts on Liberia, see below.

³⁴ S/RES/1549 (17 June 2004), operative paragraph 3.

³⁵ S/RES/1521 (22 December 2003), operative paragraph 3.

³⁶ S/RES/1521 (22 December 2003), operative paragraph 15.

³⁷ S/RES/1549 (17 June 2004), operative paragraph 7.

20.4.4 The Liberia III Panel of Experts

When the Security Council established the 1521 sanctions régime against Liberia, it also requested the Secretary-General to establish a Panel of Experts.³⁸ The Panel would operate for a period of five months and it would consist of up to five experts.³⁹ The Panel was given a mandate to undertake the following tasks: (a) To conduct a follow-up assessment mission to Liberia and neighbouring States, in order to investigate and report on the implementation, as well as any violations, of the sanctions;⁴⁰ and (b) Assessing progress made towards achieving the objectives of the 1521 sanctions régime.⁴¹

The 1521 Liberia Panel of Experts submitted its first report in June 2004.⁴² In its report, the Panel outlined observations and recommendations relating to each of the arms, diamond and timber sanctions. The Panel also touched upon some technical details relating to the travel sanctions, without making any substantive observations or recommendations.⁴³

With respect to the arms sanctions, the Panel found no evidence of weapons trafficking into Liberia over the preceding eight months.⁴⁴ Nonetheless, organised smuggling networks remained, with the potential to fuel regional instability. The Panel thus recommended that the arms sanctions should remain and that the ECOWAS moratorium on small arms should be implemented.

³⁸ S/RES/1521 (22 December 2003), operative paragraph 22.

³⁹ S/RES/1521 (22 December 2003), operative paragraph 22.

⁴⁰ S/RES/1521 (22 December 2003), operative paragraph 22(a).

⁴¹ S/RES/1521 (22 December 2003), operative paragraph 22(b).

⁴² S/2004/396 (1 June 2004), annex: *Report of the Panel of Experts pursuant to paragraph 22 of Security Council resolution 1521 (2003) concerning Liberia*.

⁴³ For brief discussion of the travel sanctions, see *ibid*, paragraphs 153-6.

⁴⁴ For the Panel's observations and recommendations concerning the arms sanctions, see *ibid*, paragraphs 3 and 59.

In connection with the diamond sanctions, the Panel noted that due to poor domestic security, diamond mining in Liberia had virtually ceased.⁴⁵ The National Transitional Government of Liberia (NTGL) had begun taking steps towards establishing an effective certificate of origin scheme for trade in rough diamonds, with a view to joining the Kimberley Process. The Panel recommended that those positive developments should be encouraged by the international community through the provision of financial and technical support.

With respect to the timber sanctions, the Panel observed that there was no evidence of widespread timber exports.⁴⁶ Nevertheless, until the Forestry Development Authority was operational and security achieved, the conditions necessary to lift the sanctions could not be met, as the revenue from forestry and the security forces used by logging companies could be a cause of regional instability. Referring to the humanitarian and socio-economic impact of the timber sanctions, the Panel noted that there had been some adverse consequences as a result of the application of the sanctions, including loss of employment and tax revenues. It contended however, on the basis of a poll it had conducted, that many Liberians viewed the sanctions as positive steps towards establishing durable peace and sustainable development.

After the Panel had submitted its first report, the Council decided to re-establish it for a further period of six months. The re-established Panel's mandate included the following tasks: (a) conducting a follow-up mission to Liberia and neighbouring States, in order to

⁴⁵ For the Panel's observations and recommendations concerning the diamond sanctions, see *ibid*, paragraphs 5 and 94.

⁴⁶ For the Panel's observations and recommendations concerning the timber sanctions, see *ibid*, paragraphs 6, 119-20. For its observations and recommendations concerning the humanitarian and socio-economic impact of the timber sanctions, see paragraphs 7, 151-2.

investigate and compile a report on the implementation and violations of the sanctions;⁴⁷ (b) assessing progress made towards achieving the objectives of the sanctions;⁴⁸ (c) monitoring implementation of the financial sanctions imposed by resolution 1532 (2004) and providing the 1521 Committee with any information that would help to identify individuals and entities subject to the financial sanctions;⁴⁹ and (d) assessing the socio-economic and humanitarian impact of the sanctions;⁵⁰ and (e) submitting a mid-term report to the Council, through the 1521 Committee, no later than 30 September 2004, and a final report no later than 10 December 2004.⁵¹

20.4.5 United Nations operations

In its oversight of the Liberia III sanctions régime, the Council has called upon a number of United Nations operations to play a role with respect to sanctions monitoring and enforcement. When the Council initiated the Liberia III sanctions régime, it welcomed the readiness of the United Nations Mission in Liberia (UNMIL) to assist both the 1521 Committee and Panel of Experts in monitoring the implementation of sanctions, and it requested the United Nations Mission in Sierra Leone (UNAMSIL) and the United Nations Mission in Côte d'Ivoire (UNMICI) also to assist the Committee and Panel by forwarding any information relevant to the implementation of the Liberia III sanctions, in the context of enhanced coordination among United Nations missions and offices in West Africa.⁵²

⁴⁷ S/RES/1549 (17 June 2004), operative paragraph 1(a).

⁴⁸ S/RES/1549 (17 June 2004), operative paragraph 1(b).

⁴⁹ S/RES/1549 (17 June 2004), operative paragraph 1(c).

⁵⁰ S/RES/1549 (17 June 2004), operative paragraph 1(d).

⁵¹ S/RES/1549 (17 June 2004), operative paragraph 2.

⁵² S/RES/1521 (22 December 2003), operative paragraph 23.

20.5 Notable aspects of the Liberia III sanctions régime

The Liberia III sanctions régime is notable largely as an example of many of the sanctions innovations implemented by the Security Council in the early years of the twenty-first century. It consists of a range of different targeted sanctions measures, most of which are applied for particular objectives. The Council established both a Sanctions Committee and a Panel of Experts in order to administer and monitor sanctions implementation, and it also called upon United Nations operations present in the region to play a role in sanctions monitoring. The Liberia III sanctions régime also represents yet another instance in which the Council has utilized time-limits in the application of sanctions.

Bibliography

- Abi-Saab, Georges, 'The Concept of Sanction in International law', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 29-41.
- Abi-Saab, Georges, 'Whither the International Community?' (1998) 9 *EJIL* 248-65.
- Aceves, William J., 'Institutionalist Theory and International Legal Scholarship' (1997) 12 *Am. U. JILP* 227-66.
- Al-Anbari, A. Amir, 'The Impact of United Nations Sanctions on Economic Development, Human Rights and Civil Society', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 371-80.
- Alexandrowicz, C.H. (ed), *Grotian Society Papers 1968: Studies in the History of the Law of Nations* (1970) Martinus Nijhoff, The Hague.
- Alexandrowicz, C.H., *An Introduction to the History of the Law of Nations in the East Indies* (1967) Clarendon Press, Oxford.
- Al-Khasawneh, Bisher H., 'Consultation under Article 50 of the United Nations Charter – the Experience of the Middle-East', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 325-33.
- Allain, Jean, *A Century of International Adjudication: The Rule of Law and its Limits* (2000) TMC ASSER, the Hague.
- Allott, Philip (ed.), *Theory and International Law: an Introduction* (1991) British Institute of International and Comparative Law, London.
- Allott, Philip, 'The Concept of International Law' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 69-89.
- Allott, Philip, *Eunomia: New Order for a New World* (1990).
- Allott, Philip, *International Law and International Revolution: Reconceiving the World* (1989) Hull University Press.
- Al-Nauimi, Najeeb & Meese, Richard (eds), *International Legal Issues Arising Under the United Nations Decade of International Law* (1995) Martinus Nijhoff, The Hague.
- Alvarez, José E., 'Hegemonic International Law Revisited (editorial comment)' (2003) 97 *AJIL* 873-88.
- Alvarez, José E., 'Judging the Security Council' (1996) 90 *AJIL* 1-39.
- Alvarez, José E., 'Promoting the "Rule of Law" in Latin America: Problems and Prospects' (1991) 25 *GWJILE* 281-331.
- Alvarez, José E., 'The Quest for Legitimacy: an examination of *The Power of Legitimacy Among Nations* by Thomas M. Franck' (1991) 24 *NYUJILP* 199-255.
- Alvarez, José E., 'What's the Security Council for?' (1996) 17 *Mich. JIL* 221-8.
- Alvarez, José E., 'Why Nations Behave' (1998) 19 *Mich. JIL* 303-17.
- American Friends Service Committee, *Dollars or bombs: the search for justice through international economic sanctions* (1992) AFSC, Philadelphia, PA.
- Amley, Edward A., Jr., 'Peace by Other Means: using rewards in UN efforts to end conflicts' (1998) *DJILP* 235-97.
- Ammash, Huda S., 'Toxic Pollution, the Gulf War, and Sanctions', in Arno, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA, 205-14.
- Ammerman, Nancy Tatom, *Baptist Battles: Social Change and Religious Conflict in the Southern Baptist Convention* (1990) Rutgers UP, New Brunswick, NJ.
- Amoroso, Bruno, *On Globalization: Capitalism in the Twenty-first Century* (1998) St. Martin's

- Press, NY.
- Amstutz, Mark R., *International Ethics: Concepts, Theories, and Cases in Global Politics* (1999) Rowman & Littlefield, Lanham, MD.
- Anderson, Chandler P., 'The Power of Public Opinion for Peace' (1922) 16 *AJIL* 241-3.
- Angelet, Nicolas, 'International Law Limits to the Security Council', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 71-82.
- Angell, David J.R., 'The Angola Sanctions Committee', in Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004) Lynne Rienner, Boulder, CO, 195-204.
- Angell, Norman, *The World's Highway* (1915) George H. Doran, NY.
- Anghie, Anthony, 'Finding the Peripheries: sovereignty and colonialism in nineteenth-century international law' (1999) 40 *HILJ* 1-80.
- Anthony, Ian, 'Improving the Cooperation of Major Arms Suppliers' in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 87-100.
- Archibugi, Daniele, Held, David, & Köhler, Martin (eds), *Re-imagining Political Community: studies in cosmopolitan democracy* (1998) Polity Press, Cambridge.
- Arend, Anthony Clark, 'Toward an understanding of international rules' in Beck, Robert J., Arend, Anthony Clark & Vander Lugt, Robert D., *International Rules: approaches from international law and international relations* (1996) OUP, Oxford, 289-310.
- Arend, Anthony Clark, *Legal Rules and International Society* (1999) OUP, Oxford.
- Arend, Anthony Clark, 'Do Legal Rules Matter? International Law and International Politics' (1998) 38 *VJIL* 107.
- Armove, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA.
- Articles/Chapters/Books
- Austin, John, *The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence* (1954) Weidenfeld & Nicholson, London.
- Aydin, Ahmet H., *Police Organisation and Legitimacy: case studies of England, Wales and Turkey* (1997) Avebury, Brookfield, VT.
- Aznar-Gómez, Mariano J., 'A Decade of Human Rights Protection by the UN Security Council: A Sketch of Deregulation?' (2002) 13 *EJIL* 223-41.
- Bacchus, James, 'Groping towards Grotius: the WTO and the international rule of law' (2003) 44 *Harvard ILJ* 533-50.
- Bailey, Sydney D. & Daws, Sam, *The procedure of the UN Security Council* (3rd ed. 1998) Clarendon Press, Oxford.
- Bailey, Sydney D., *The UN Security Council and Human Rights* (1994) St. Martin's Press, NY.
- Baldwin, David A., & Pape, Robert A., 'Evaluating Economic Sanctions' (1998) 23 *International Security* 189-98 (correspondence).
- Baldwin, David, *Economic Statecraft* (1985), Princeton UP, NJ.
- Barker, Rodney, *Political Legitimacy and the state* (1990) Oxford UP, Oxford.
- Barnes, Rudolph C., Jr., *Military Legitimacy: might and right in the new millennium* (1996) Frank Cass, Portland, OR.
- Barry, Brian, *Justice as Impartiality* (1995) Oxford UP, NY.
- Barry, Brian, *Theories of Justice* (1989) Harvester Wheatsheaf, Hempel Hempstead.
- Barthes, Roland, *Image Music Text* (1977) Fontana, London.
- Barthes, Roland, *Mythologies* (1972) J. Cape, London.
- Bartlett, Katharine T., & Kennedy, Rosanne (eds), *Feminist Legal Theory: readings in law and gender* (1991) Westview Press, Boulder, CO.

- Bartlett, Roger W., *Power Base Attribution and the Perceived Legitimacy of Managerial Accounting* (1983) UMI Research Press, Ann Arbor, MI.
- Bartlett, Will, 'From Reform to Crisis: Economic Impacts of Secession, War and Sanctions in the Former Yugoslavia' in Jeffries, Ian (ed), *Problems of Economic and Political Transformation in the Balkans* (1996) Pinter, NY 151-71.
- Basch, Antonín, *The New Economic Warfare* (1941) Columbia UP, New York.
- Beck, Robert J., Arend, Anthony Clark & Vander Lugt, Robert D., *International Rules: approaches from international law and international relations* (1996) OUP, Oxford.
- Bederman, David, 'Collective Security, Demilitarization and "Pariah" States' (2002) 13 *EJIL* 121-38.
- Bedjaoui, Mohammed, *The New World Order and the Security Council: Testing the Legality of its Acts* (1994) Martinus Nijhoff, Netherlands.
- Beetham, David, *The legitimization of power* (1991) Macmillan, Basingstoke, UK
- Belch, Stanislas F., *The Contribution of Poland to the Development of International Law* (1964) Veritas Foundation, London.
- Bellamy, Carol, 'A Peace and Security Agenda for Children', briefing to the Security Council, February 12, 1999.
- Bennis, Phyllis & Halliday, Dennis J. (interviewed by Barsamian, David), 'Iraq: the Impact of Sanctions and US Policy', in Arnone, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA, 53-64.
- Bennoune, Karima, ' "Sovereignty vs. Suffering?" Re-Examining Sovereignty and Human Rights Through the Lens of Iraq' (2002) 13 *EJIL* 243-62.
- Bentham, Jeremy, *A Fragment on Government* (1776) London.
- Benveniste, Emile, *Problems in General Linguistics* (1971) University of Miami Press, Florida.
- Bergeijk, Peter A.G. Van, *Economic Diplomacy, Trade and Commercial Policy: Positive and Negative Sanctions in a New World Order* (1994) Edward Elgar Publishing, Brookfield, VT
- Berman, Eric G., 'Sanctions Against the Genocidares: Experiences of the 1998 UN International Commission of Inquiry', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 163-78.
- Berman, Nathaniel, 'Beyond Colonialism and Nationalism? Ethiopia, Czechoslovakia and "Peaceful Change" ' (1996) 65 *Nordic JIL* 421-79.
- Berman, Nathaniel, 'The paradoxes of legitimacy: case-studies in international legal modernism' (book review) (1991) 32 *Harvard ILJ* 583-95.
- Bernárdez, Santiago Torres, 'Some Considerations on the Respective Roles of the Security Council and the International Court of Justice With Respect to "the Prevention of Aggravation of Disputes" in the Domain of Pacific Settlement of International Disputes or Situations' in Al-Nauimi, Najeeb & Meese, Richard (eds), *International Legal Issues Arising Under the United Nations Decade of International Law* (1995) Martinus Nijhoff, The Hague, 663-708.
- Bertram, Anton, 'The Economic Weapon as a Form of Peaceful Pressure' (1932) 17 *Problems of Peace and War (Grotius Society Papers)* 139-74.
- Bethlehem, Daniel L. & Lauterpacht, E., *The Kuwait Crisis: Sanctions and their Economic Consequences* (1991) Grotius Publications, Cambridge UK.
- Bethlehem, Daniel, 'Regional Interface between Security Council Decisions and Member States Implementation: The Example of the European Union', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 291-305.
- Bianchi, Andrea, 'Ad-hocism and the Rule of Law' (2002) 13 *EJIL* 263-72.
- Bielefeldt, H., 'Deconstruction of the "Rule of Law": Carl Schmitt's philosophy of the political'

- (1996) 82 *Archiv für Rechts- und Sozialphilosophie* 379-96.
- Bienen, Derk, Rittberger, Volker, and Wagner, Wolfgang, 'Democracy in the United Nations system: cosmopolitan and communitarian principles' in Archibugi, Daniele, Held, David and Köhler, Martin (eds), *Re-imagining political community: studies in cosmopolitan democracy* (1998) Polity Press, Cambridge UK, 287 - 308.
- Bishop, William W., 'The International Rule of law' (1960-61) 59 *Michigan LR* 553-74.
- Blaug, Ricardo, *Democracy, Real and Ideal: Discourse Ethics and Radical Politics* (1999) SUNY Press, Albany, NY.
- Blay, Sam, Piotrowicz, Ryszard, & Tsamenyi, B. Martin, *Public International Law: an Australian Perspective* (1997) OUP, Oxford.
- Blokker, Niels, 'Is the Authorization Authorized? Powers and Practice of the UN Security Council to Authorize the Use of Force by "Coalitions of the Willing"' (2000) 11 *EJIL* 541-68.
- Bobbio, Norberto & Zolo, Danilo, 'Hans Kelsen, The Theory of Law and the International Legal System: A Talk' (1998) 9 *EJIL* 355-67.
- Bodansky, Daniel, 'The Legitimacy of International Governance: a coming challenge for international environmental law?' (1999) 93 *AJIL* 596-624.
- Bogdan, Michael, *Comparative Law* (1994) Kluwer, Cambridge, Mass.
- Boldizar, Alexander & Korhonen, Outi, 'Ethics, Morals and International Law' (1999) 10 *EJIL* 279-311.
- Bondi, Loretta, 'Arms Embargoes: In Name Only?', in Cortright, David & Lopez, George A. (eds), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD, 109-23.
- Bondi, Loretta, 'Arms embargoes' (1998) HRW paper.
- Bondi, Loretta, 'Arms Embargoes' in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 63-85.
- Bookman, Milica Zarkovic, *Economic Decline and Nationalism in the Balkans* (1994) St. Martin's Press, New York.
- Booth, Douglas, *The Race Game: sport and politics in South Africa* (1998) F. Cass, Portland, OR.
- Bourquin, Maurice (ed.), *Collective Security: a record of the seventh and eighth International Studies Conferences* (1936) Institut international de Coopération intellectuelle, Paris, 359-401; 469-487.
- Bowett, Derek W., 'Judicial and Political Functions of the Security Council and the International Court of Justice' in Fox, Hazel (ed.), *The Changing Constitution of the United Nations* (1997) The British Institute of International and Comparative Law, London, 73-88.
- Bowett, Derek W., *Self-Defence in International Law* (1958) Praeger, NY
- Bowles, Samuel & Gintis, Herbert, *Democracy and Capitalism: Property, Community, and the Contradictions of Modern Social Thought* (1986), Basic Books, NY.
- Boyle, J.(ed.), *Critical Legal Studies* (1992) Dartmouth, Aldershot.
- Bradley, Phillips, 'Some Legislative and Administrative Aspects of the Application of Article XVI of the Covenant' (1937) 22 *Problems of Peace and War (Grotius Society Papers)* 13-29.
- Brady, Lawrence J., 'The utility of economic sanctions as a policy instrument', in Leyton-Brown, David (ed), *The Utility of International Economic Sanctions* (1987) Croom Helm, Beckenham, Kent, 297-302
- Bramwell, Anna, *Ecology in the Twentieth Century* (1989) Yale UP, New Haven, Conn..
- Brichambaut, Marc Perrin de, 'The Role of the United Nations Security Council in the international Legal System' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 269-76.

- Brierly, J.L., 'Sanctions' (1932) 17 *Problems of Peace and War (Grotius Society Papers)* 67-84.
- Brierly, J.L., 'The Rule of Law in International Society', in Lauterpacht, H. & Waldock, H. (eds.), *The Basis of Obligation in International Law and Other Papers* (1958), 250-264.
- Brown, Harvey Newton, *Freemasonry Among Negroes and Whites in America; a study in Masonic legitimacy and regularity* (1965) Mireles Print Co., El Paso, Texas.
- Brown, Michael E., *The International Dimensions of Internal Conflict* (1996) John F. Kennedy School of Government, Cambridge, MA.
- Brown-John, C. Lloyd, *Multilateral Sanctions in International Law: a comparative analysis* (1975) Praeger, New York.
- Brownlie, Ian, 'International Law at the Fiftieth Anniversary of the United Nations: General Course on Public International Law' (1995) 255 *Recueil des Cours* 9-228.
- Brownlie, Ian, 'The Decisions of the Political Organs of the United Nations and the Rule of Law', in Macdonald, Ronald St. J. (ed.), *Essays in honour of Wang Tieys* (1994) Martinus Nijhoff, Dordrecht, Netherlands, 91-102.
- Brownlie, Ian, *International Law and the Use of Force by States* (1963) OUP, Oxford, UK.
- Brownlie, Ian, *Principles of Public International Law* (1998: 5th edition) Clarendon Press, Oxford.
- Brownlie, Ian, *System of the Law of Nations: State Responsibility* (1983) Clarendon Press, Oxford.
- Brownlie, Ian, *The Rule of Law in International Affairs: International Law at the Fiftieth Anniversary of the United Nations* (1998) Martinus Nijhoff, The Hague.
- Bröderlein, Claude, 'Carrot and Stick Approach for the Implementation of Financial Sanctions', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ('Final Report of Interlaken I': available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 127-8.
- Bröderlein, Claude, 'UN Security Council at the Crossroads: Toward Smarter and Better Managed Sanctions Regimes' Paper presented at the Center for International Studies, Massachusetts Institute of Technology, Cambridge, on 22 September 1998 [on file with author].
- Brzoska, Michael, 'A Brief Background on the 'Bonn-Berlin Process'', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 9-17.
- Brzoska, Michael, 'Putting More Teeth in UN Arms Embargoes', in Cortright, David & Lopez, George A. (eds.), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD, 125-43.
- Buell, Raymond Leslie, 'Yes', in Foreign Policy Association, *Are Sanctions Necessary to International Organization?* (1932) Foreign Policy Association, New York, 3-22.
- Burci, Gian Luca, 'Interpreting the Humanitarian Exceptions through the Sanctions Committees', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 143-54.
- Burdeau, Geneviève, 'Les effets juridiques des résolutions du Conseil de sécurité sur les contrats privés', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 267-88.
- Burley, Anne-Marie Slaughter, 'Are Foreign Affairs Different?' (book review of Franck, Thomas M., *Political Questions/Judicial Answers: does the rule of law apply to foreign affairs?*) (1993) 106 *Harvard Law Review* 1980-2008.
- Burri, Jürg, 'Introductory Paper for the Expert Seminar on Targeting United Nations Sanctions', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ('Final Report of Interlaken I': available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 9-22.
- Butchkov, Petar, Kovatcheva, Nadejda & Raytcheva, Rossitza, 'The Economic and Political

- Effects of the 'Yugo-Sanctions' on Neighbouring Bulgaria' in Genugten, Willem J.M. van & Groot, Gerard A. de (eds), *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights* (1999) Intersentia, Antwerp, 35-47.
- Butler, Geoffrey & Maccoby, Simon, *The Development of International Law* (1928) Longmans, Green & Co, London.
- Butler, Richard, 'Can the Security Council Enforce International Law?' (1998) *Proceedings of the ANZSIL Conference* 3-12.
- Butler, William E. (ed.), *Control Over Compliance With International Law* (1991) Martinus Nijhoff, Dordrecht.
- Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford.
- Byers, Michael, 'Conceptualising the Relationship between Jus Cogens and Erga Omnes Rules' (1997) 66 *Nordic JIL* 211-39.
- Byers, Michael, 'The Shifting Foundations of International Law: A Decade of Forceful Measures against Iraq' (2002) 13 *EJIL* 21-41.
- Byers, Michael, *Custom, Power and the Power of Rules* (1999) Cambridge UP, Cambridge.
- Caflich, Lucius, 'Is the International Court Entitled to Review Security Council Resolutions Adopted Under Chapter VII of the United Nations Charter?' in Al-Nauimi, Najeeb & Meese, Richard (eds), *International Legal Issues Arising Under the United Nations Decade of International Law* (1995) Martinus Nijhoff, The Hague, 633-62.
- Cameron, Iain, *Targeted Sanctions and Legal Safeguards* (2002) Uppsala [available at www.jur.uu.se/sii/index.html (publications): last visited on 17 July 2003]
- Campaign Against Sanctions On Iraq, *Sanctions On Iraq: Background, Consequences, Strategies* (2000) Campaign Against Sanctions On Iraq, Cambridge, UK.
- Campbell, Tom, *Justice* (1988) Macmillan, London.
- Canadian Department of External Affairs, *Documents Relating to the Italo-Ethiopian Conflict* (1936) Department of External Affairs, Ottawa.
- Canor, Iris, "'Can Two Walk Together, Except They Be Agreed?'" The Relationship between International Law and European Law: the Incorporation of United Nations Sanctions against Yugoslavia into European Community Law through the Perspve of the European Court of Justice' (1998) 35 *Common Market LR* 137-87.
- Capaccio, George, 'Sanctions: Killing a Country and a People', in Arnove, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA, 171-82.
- Carbaugh, R., & Wassink, D., 'International sanctions and economic theory' (1988) 33 *Revista Internazionale di Scienze Economiche e Commerciali* 217-225.
- Caron, David D., 'The Legitimacy of the Collective Authority of the Security Council' (1993) 87 *AJIL* 552-88.
- Carothers, Thomas, 'The Rule of Law Revival' (1998) 77 *Foreign Affairs* 95-106.
- Carty, Anthony, 'The Continuing Influence of Kelsen on the General Perception of the Discipline of International Law' (1998) 9 *EJIL* 344-54.
- Carver, Jeremy, 'Making Financial Sanctions Work: Preconditions for Successful Implementation of Sanctions by the Implementing State', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 87-104.
- Cass, Deborah Z., 'Navigating the New Stream: recent critical scholarship in international law' (1996) 65 *Nordic JIL* 341-383.
- Cassese, Antonio, *International Law in a Divided World* (1988) OUP, Oxford.
- Center for Economic and Social Rights, *(UN) Sanctioned Suffering: a Human Rights Assessment of United Nations Sanctions on Iraq* (1996) Center for Economic and Social Rights, NY.

- Chandhoke, Neera, *The Politics of UN Sanctions* (1986) Gitanjali Publishing, New Delhi.
- Charlesworth, Hilary & Chinkin, Christine, *The boundaries of international law: a feminist analysis* (2000) Manchester UP, Manchester.
- Charlesworth, Hilary, 'Cries and Whispers: Responses to Feminist Scholarship in International Law' (1996) 65 *Nordic JIL* 557-68.
- Charlesworth, Hilary, Chinkin, Christine, and Wright, Shelley, 'Feminist Approaches to International Law' (1991) 85 *AJIL* 613-45.
- Chayes, Abram & Chayes, Antonia, *The new sovereignty: compliance with international regulatory agreements* (1995) Harvard UP, Boston.
- Chemillier-Gendreau, Monique, 'Contrainte légale et violence illégale en droit international: fondements de la distinction', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 393-401.
- Chen, Lung-Chu, *An Introduction to Contemporary International Law* (2000) Yale UP, New Haven.
- Chesterman, Simon & Byers, Michael, 'Has U.S. Power Destroyed the UN?' (1999) 21 *London Review of Books* 29-30.
- Chesterman, Simon, & Pouligny, Béatrice, *The Politics of Sanctions* (2002) International Peace Academy, NY, NY.
- Chesterman, Simon, *Just War or Just Peace? Humanitarian intervention and international law* (2001) OUP, Oxford.
- Chinkin, Christine M., 'NATO's Kosovo Intervention: Kosovo: A "Good" or "Bad" War?' (1999) 93 *AJIL* 841-7.
- Chinkin, Christine, 'Alternatives to Economic Sanctions', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 381-91.
- Chinkin, Christine, 'Human Rights and the Politics of Representation: Is there a Role for International Law?' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 131-47.
- Chinkin, Christine, 'The Legality of the Imposition of Sanctions by the European Union in International Law' in Evans, Malcolm D. (ed.), *Aspects of statehood and institutionalism in contemporary Europe* (1997) Dartmouth, Brookfield VT, 183-213.
- Chomsky, Noam, 'US Iraq Policy: Motives and Consequences', in Armove, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA, 65-74.
- Chomsky, Noam, Herman, Edward, Said, Edward, Zinn, Howard, et al., 'Sanctions are Weapons of Mass Destruction', in Armove, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA, 217-19.
- Cicero, *De Re Publica* (1970) William Heineman, London.
- Clapham, Andrew, 'Globalisation and the Rule of Law' (1999) 61 *International Commission of Jurists: The Review* 17-33.
- Clapham, Andrew, 'Sanctions and Economic, Social and Cultural Rights', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 131-41.
- Clark, Evans (ed), *Boycotts and Peace: a Report by the Committee on Economic Sanctions* (1932) Harper, New York.
- Clark, Grover, 'The English Practice with Regard to Reprisals by Private Persons' (1933) 27 *AJIL* 694-723.
- Clark, Lorraine M.G. & Lange, Lynda (eds), *The Sexism of Social and Political Theory: women and reproduction from Plato to Nietzsche* (1979) University of Toronto Press, Toronto.

- Clark, Ramsey & the Food and Agriculture Organization of the United Nations, *The Children are Dying: the impact of sanctions on Iraq* (1996) World View Forum, NY.
- Claude, Inis L., 'Collective Legitimization as a Political Function of the United Nations' (1966) 20 *International Organization* 367-79.
- Clements, K. & Ward, R. (eds), *Building International Community* (1994) Allen & Unwin, Canberra.
- Cluckers, Albert, 'How Can Financial Assets and Financial Transactions be Controlled? Comments from a Banker's Point of View', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 81-4.
- Colbert, Evelyn S., *Retaliation in International Law* (1948) King's Crown Press, NY.
- Colombos, C. John, *A Treatise on the Law of Prize* (1949: 3^d ed.) Longmans, Green & Co., London.
- Combacau, Jean, 'Sanctions' in *Encyclopedia of Public International Law* (1986) Max Planck Institute for Comparative Public Law and International Law, Amsterdam, vol. 9, 337-41.
- Combacau, Jean, *Le Pouvoir de Sanction de L'O.N.U.: Étude Théorique de la Coercition non Militaire* (1974) Editions A. Pedone, Paris.
- Condorelli, Luigi, 'La compatibilité des sanctions du Conseil de Sécurité avec le droit international humanitaire – commentaire', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 233-40.
- Conference, Report of the Copenhagen Round Table on United Nations Sanctions in the Case of the Former Yugoslavia, Copenhagen, June 24-25, 1996.
- Conlon, Paul, 'Legal Problems at the Centre of United Nations Sanctions' (1996) 65 *Nordic JIL* 73-90.
- Conlon, Paul, 'Lessons from Iraq: the Functions of the Iraq Sanctions Committee as a Source of Sanctions Implementation Authority and Practice' (1995) 35 *VJIL* 633-68.
- Conlon, Paul, 'The Humanitarian Mitigation of UN Sanctions' (1996) 39 *German Yearbook of International Law* 249-84.
- Conlon, Paul, 'The UN's Questionable Sanctions Practices' (1996) 53/54 *Law and State* 133-46.
- Conlon, Paul, *United Nations Sanctions Management: a Case Study of the Iraq Sanctions Committee* (2000) Transnational Publishers, Ardsley, NY
- Connolly, William (ed.), *Legitimacy and the state* (1984) NYU Press, New York.
- Connolly, William, 'Introduction: Legitimacy and Modernity' in Connolly, William (ed.), *Legitimacy and the state* (1984) NYU Press, New York, 1-19.
- Connolly, William, 'The Dilemma of Legitimacy' in Connolly, William (ed.), *Legitimacy and the state* (1984) NYU Press, New York, 222-49.
- Conroy, Richard W., 'Implementation Problems of Travel Bans: Practical and Legal Aspects', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 205-21.
- Conroy, Richard W., 'The UN Experience with Travel Sanctions: Selected Cases and Conclusions', in Cortright, David & Lopez, George A. (eds), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD, 145-69.
- Conroy, Richard, 'UN travel sanctions: an evaluation with policy recommendations' (1999), Fourth Freedom Forum, Goshen (found on 'web')
- Constitutional Justice: A Liberal Theory of the Rule of Law*, by ??
- Cordesman, Anthony H., *Iraq and the war of sanctions: conventional threats and weapons of mass destruction* (1999) Praeger, Westport, CT
- Corell, Hans, 'Developing the Rule of Law among nations: a challenge for the United Nations', Lecture given to the United Nations Association of the United Kingdom, 7 July 2003. Available on-line at: www.un.org/law/counsel/info.htm (last visited on 10 December

- 2003).
- Corell, Hans, 'The Visible College of International Law: "Towards the Rule of Law in International Relations"' (2001) *ASIL Proceedings* 262-70.
- Cortright, David & Lopez, George (eds), *Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World* (1993) Goshen, IN
- Cortright, David & Lopez, George A. (eds), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD.
- Cortright, David & Lopez, George A., 'Assessing Smart Sanctions: Lessons from the 1990s', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 19-37.
- Cortright, David & Lopez, George A., 'Assessing Smart Sanctions: Lessons from the 1990s', in Cortright, David & Lopez, George A. (eds), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD, 1-22.
- Cortright, David & Lopez, George A., 'Reforming Sanctions', in Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004) Lynne Rienner, Boulder, CO, 167-79.
- Cortright, David & Lopez, George A., 'Sanctions against Iraq: facts and analysis' posted online: <<http://fourthfreedom.org/hottopic/sanctionsagainstiraqfactsanalysis.html>>
- Cortright, David & Lopez, George A., 'Sanctions and Incentives as Tools of Economic Sanctions' in Väyrynen, Raimo (ed.), *Globalization and Global Governance* (1999) Rowman & Littlefield, Lanham, MD, 105-25.
- Cortright, David & Lopez, George A., *Sanctions and the Search for Security: Challenges to UN Action* (2002) Lynne Rienner, Boulder, CO
- Cortright, David & Lopez, George A., *The Sanctions Decade: Assessing UN Strategies in the 1990s* (2000) Lynne Rienner, Boulder, CO
- Cortright, David (ed.), *The Price of Peace: Incentives and International Conflict Prevention* (1997) Rowman & Littlefield, Lanham, MD.
- Cortright, David, 'Targeted financial sanctions: problems and prospects', paper delivered at the conference "Teamwork in conflict prevention: implementing preventive strategies," sponsored by the Carnegie Commission on Preventing Deadly Conflict, November 22-24, 1998, Washington, DC.
- Cortright, David, Lopez, George A., & Conroy, Richard W., 'Are Travel Sanctions Smart? A Review of Theory and Practice', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 179-93.
- Cortright, David, Lopez, George A., & Rogers, Elizabeth S., 'Targeted Financial Sanctions: Smart Sanctions That Do Work', in Cortright, David & Lopez, George A. (eds), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD, 23-40.
- Cranston, Maurice, 'From Legitimism to Legitimacy' in Moulakis, Athanasios (ed.), *Legitimacy/Légitimité* (1985) de Gruyter & Co, Berlin, 36-43.
- Craven, Matthew, 'Humanitarianism and the Quest for Smarter Sanctions' (2002) 13 *EJIL* 43-61.
- Crawford, James, 'Democracy and the Body of International Law' in Fox, Gregory H., & Roth, Brad R., *Democratic Governance and International Law* (2000) Cambridge UP, Cambridge, UK, 91-122.
- Crawford, James, 'The Charter of the United Nations as a Constitution' in Fox, Hazel (ed.), *The Changing Constitution of the United Nations* (1997) The British Institute of International and Comparative Law, London, 3-16.
- Crawford, James, 'The Relationship between Sanctions and Countermeasures', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 57-68.
- Crawford, Neta C. & Klotz, Audie (eds), *How Sanctions Work; Lessons from South Africa*

- (1999) St. Martin's Press, NY.
- Crawford, Neta C. & Klotz, Audie, 'How Sanctions Work: A Framework for Analysis' in Crawford, Neta C. & Klotz, Audie (eds), *How Sanctions Work; Lessons from South Africa* (1999) St. Martin's Press, NY, 25-42.
- Crawford, Neta C., 'The Humanitarian Consequences of Sanctioning South Africa: A Preliminary Assessment', in Weiss, Thomas G., Cortright, David, Lopez, George A., & Minear, Larry (eds.), *Political Gain and Civilian Pain: humanitarian impacts of economic sanctions* (1997) Rowman & Littlefield, Lanham, MD, 57-89.
- Crawford, Neta C., 'Trump Card or Theater? An Introduction to Two Sanctions Debates' in Crawford, Neta C. & Klotz, Audie (eds), *How Sanctions Work; Lessons from South Africa* (1999) St. Martin's Press, NY, 3-24.
- Crenshaw, Kimberlé Williams, 'Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law' (1988) 101 *Harvard Law Review* 1331-87.
- Crick, Bernard, *Socialism* (1987) Open UP, Milton Keynes.
- Culler, Jonathan, *On Deconstruction: Theory and Criticism after Structuralism* (1982) Cornell UP, Ithaca, NY.
- Czapliński, Wladyslaw, 'The Position of States Specially Affected by Sanctions in the Meaning of Article 50 of the United Nations Charter – The Experience of Eastern Europe', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 335-47.
- Damrosch, Lori F., 'The Permanent Five as Enforcers of Controls on Weapons of Mass Destruction: Building on the Iraq "Precedent"' (2002) 13 *EJIL* 305-21.
- Damrosch, Lori F., Caron, David D., Rashkow, Bruce C., & Wolfrum, Rüdiger, 'The Security Council: its authority and legitimacy' [panel discussion] (1993) 87 *ASIL Proceedings* 300-320.
- Damrosch, Lori Fisler (ed), *Enforcing Restraint: Collective Intervention in Internal Conflicts* (1993) Council on Foreign Relations, New York.
- Damrosch, Lori Fisler, 'The Civilian Impact of Economic Sanctions' in Damrosch, Lori Fisler (ed), *Enforcing Restraint: Collective Intervention in Internal Conflicts* (1993) Council on Foreign Relations, New York, pp 274-315.
- Damrosch, Lori Fisler, *Enforcing International Law through Non-Forcible Measures* (1997) 269 *Recueil des Cours* 9-250.
- Daoudi, M.S. & Dajani, M.S., *Economic Sanctions, ideals and experience* (1983) Routledge, London.
- Darian-Smith, Eve & Fitzpatrick, Peter (eds), *Laws of the Postcolonial* (1999) University of Michigan Press, Ann Arbor.
- Davies, Margaret, *Asking the law question* (1994) Sweet & Maxwell, London.
- Debauv, B.S.L., *Le Dénouement de la révolution française* (1796) Chez Cocheris, Paris.
- Delgado, Richard & Stefancic, Jean, *Critical Race Theory: the Cutting Edge* (2000 - 2nd edition) Temple UP, Philadelphia, PA.
- Delgado, Richard, 'The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?' (1987) 22 *Harvard Civil Rights - Civil Liberties Law Review* 301-22.
- Denitch, Bogdan, *Legitimation of Regimes* (1979), Sage Publications, London.
- Denters, Erik & Schrijver, Nico (eds), *Reflections on International Law from the Low Countries* (1998) Martinus Nijhoff, The Hague.
- Derbyshire, J. Denis & Derbyshire, Ian, *Political Systems of the World* (1996) St. Martin's Press, NY.
- Derrida, Jacques, *Of Grammatology* (1974) John Hopkins UP, Baltimore.
- Derrida, Jacques, *Writing and Difference* (1978) University of Chicago Press, Chicago.
- Design and Implementation of Arms Embargo and Travel Sanctions and Aviation-related Sanctions: Results of the Bonn-Berlin Process* (2001) Bonn International Center for Conversion, Bonn. Available on-line at:

- http://www.bicc.de/events/unsanc/2000/pdf/booklet/booklet_sanctions.pdf.
- Detter Delupis, Ingrid, *The International Legal Order* (1994) Dartmouth, Brookfield, VT.
- Devin, Julia & Dashti-Gibson, Jaleh, 'Sanctions in the Former Yugoslavia: Convoluted Goals and Complicated Consequences', in Weiss, Thomas G., Cortright, David, Lopez, George A., & Minear, Larry (eds.), *Political Gain and Civilian Pain: humanitarian impacts of economic sanctions* (1997) Rowman & Littlefield, Lanham, MD, 149-87.
- Dewey, John, 'No', in Foreign Policy Association, *Are Sanctions Necessary to International Organization?* (1932) Foreign Policy Association, New York, 23-39.
- Dhanapala, Jayantha, 'Final Expert Seminar on Smart Sanctions; The Next Step: Arms Embargoes and Travel Sanctions', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 39-44.
- Dieng, Adama, 'The Rule of Law in a Changing World' (1999) 61 *International Commission of Jurists: The Review* 7-10.
- Diller, Janelle, 'UN Sanctions – the ILO experience', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 197-204.
- Dinstein, Yoram, *War, Aggression and Self-Defence* (1988) Grotius Publications, Cambridge UK
- Dinstein, Yoram, *War, Aggression and Self-Defence* (1994: 2nd ed.) Cambridge UP, Cambridge.
- Dobson, Andrew, *Justice and the Environment : conceptions of environmental sustainability and theories of distributive justice* (1998) Oxford UP, Oxford.
- Domestici-Met, Marie-José, 'Les sanctions peuvent-elles se heurter à des normes concernant le système des Nations Unies lui-même ?', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 167-95.
- Donoho, Douglas Lee, 'The Role of Human Rights in Global Security Issues: a normative and institutionalist critique' (1993) 14 *Mich. JIL* 827-69.
- Doxey, Margaret P., 'United Nations Economic Sanctions: Minimizing Adverse Effects on Nontarget States', in Cortright, David & Lopez, George A. (eds), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD, 183-200.
- Doxey, Margaret P., *Economic Sanctions and International Enforcement* (1971) OUP, London
- Doxey, Margaret P., *International sanctions in Contemporary perspective* (1987) Macmillan, London
- Doxey, Margaret P., *International Sanctions in Contemporary Perspective* (2nd ed. 1996) St. Martin's Press, NY.
- Doxey, Margaret P., *United Nations Sanctions: Current Policy Issues* (1997) Center for Foreign Policy Studies, Dalhousie University, Nova Scotia.
- Doxey, Margaret, 'Financial Sanctions: Topics for Research', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 129.
- Doxey, Margaret, 'United Nations Economic Sanctions: Minimizing Adverse Effects on Non-Target States' (December 7, 1998) Paper prepared for the Symposium on Targeted Sanctions sponsored by the Fourth Freedom Forum and the Joan B. Kroc Institute for International Peace Studies, New York, December 7, 1998.
- Doyle, Bernadette & Newcomb, Richard, 'Report on Working Group 2: Development of Sanctions Regimes', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 43-6.
- Dryzek, John S., *Rational Ecology* (1987) Blackwell, Oxford.
- Duffy, Andrew, "Ottawa man "devastated" by charges of terror links: Accused wanted in U.S.

- for his role in money transfer firm has "no job, no income" (16 April 2002) *The Ottawa Citizen*
- Dugard, John, 'Judicial Review of Sanctions', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 83-91.
- Dugard, John, 'Retrospective Justice: International Law and the South African Model', in McAdams, A. James (ed.), *Transitional Justice and the Rule of Law in New Democracies* (1997) University of Notre Dame Press, Notre Dame, IN, 269-90.
- Dulles, John Foster, *War or Peace* (1950) Macmillan, NY.
- Dumas, Lloyd (Jeff), 'A Proposal for a New United Nations Council on Economic Sanctions' in Cortright, David & Lopez, George (eds), *Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World* (1993) Goshen, IN, 187-99.
- Dupraz, Jean, 'UNICEF and the Sanctions Committee – Lessons Learned from Iraq', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 155-63.
- Dupuy, Pierre-Marie, 'International Law: Torn between Coexistence, Cooperation and Globalization. General Conclusions' (1998) 9 *EJIL* 278-86.
- Dupuy, Pierre-Marie, 'Quelques remarques sur l'évolution de la pratique des sanctions décidées par le Conseil de sécurité des Nations Unies dans le cadre du Chapitre VII de la Charte', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 47-55.
- Dworkin, R.M., 'Obligations of Community' in Raz, Joseph (ed.), *Authority* (1990) Blackwell, Oxford, UK, 218-39.
- Dworkin, Ronald M., *A Matter of Principle* (1985) Harvard UP, Cambridge, MA.
- Dworkin, Ronald M., *Law's Empire* (1986) Fontana, London.
- Dyzenhaus, D., 'Recrafting the Rule of Law: the limits of legal order' (2000) 28 *International Journal of Legal Information* 567-70.
- Dyzenhaus, David, 'Hermann Heller and the Legitimacy of Legality' (1996) 16 *Oxford Journal of Legal Studies* 641-66.
- Dyzenhaus, David, 'Judicial independence, transitional justice and the rule of law' (2003) 10 *Otago LR* 345-69.
- E.U. Network of Independent Experts in Fundamental Rights (CFR-CDF), Thematic Comment: The Balance Between Freedom and Security in the Response by the European Union to the Terrorist Threats (2003) [available at <http://edoc.mpil.de/conference-on-terrorism/index.cfm> (publications): last visited on 17 July 2003]
- Easton, David, *A Systems Analysis of Political Life* (1965) Wiley, NY.
- Eaton, Howard O. (ed.), *Federation: the Coming Structure of World Government* (1944) University of Oklahoma Press, Norman OK.
- Eckersley, Robyn, *Environmentalism and Political Theory : toward an ecocentric approach* (1992) SUNY Press, Albany.
- Eitel, Tono, 'Report on Working Group 1: Preconditions for Successful Implementation', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 39-41.
- Elagab, O.Y., *The Legality of Non-Forcible Counter-Measures in International Law* (1988) Clarendon Press, Oxford.
- Ellings, Richard, *Embargoes and World Power* (1985) Westview Press, Boulder, CO.
- Elliott, Kimberley Ann, 'Analyzing the Effects of Targeted Sanctions', in Cortright, David & Lopez, George A. (eds), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD, 171-82.
- Elliott, Kimberley Ann, 'The Sanctions Glass: Half Full or Completely Empty?' (1998) 23 *International Security* 50-65.

- Environmentalism for a New Millennium : the challenge of coevolution* (1999) Oxford UP, NY
- Establishing the Supremacy of European Law: the Making of an International Rule of Law in Europe* – find author and pub details ...
- Evans, Edward W., 'Sanctions: a Problem for Pacifists' in *Toward Peace and Justice: A symposium on Methods for the Prevention of War and the Achievement of International Justice* (1937) Friends' Peace Committee, Philadelphia, PA, 12-23.
- Evans, Malcolm D. (ed), *Aspects of statehood and institutionalism in contemporary Europe* (1997) Dartmouth, Brookfield VT.
- Evatt, Herbert V., *The Task of the United Nations* (1949) Duell, Sloan and Pearce, NY, NY.
- Evatt, Herbert Vere, *The United Nations* (1948) Harvard UP, Cambridge, MA.
- Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I"). This report is available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>.
- Falk, Richard, 'The Iran Hostage Crisis: Easy Answers and Hard Questions' (1980) 74 *AJIL* 411-17.
- Falk, Richard, 'The United Nations and cosmopolitan democracy: bad dream, Utopian fantasy, political project' in Archibugi, Daniele, Held, David and Köhler, Martin (eds), *Re-imagining political community: studies in cosmopolitan democracy* (1998) Polity Press, Cambridge UK, 309 - 331.
- Falk, Richard, 'The United Nations and the rule of law' (1994) 4 *Transnational Law & Contemporary Problems* 611-42.
- Fallon, Richard H., "'The Rule of Law" as a Concept in Constitutional Discourse' (1997) 97 *Columbia LR* 1-56.
- Fassbender, Bardo, 'Pressure for Security Council Reform', in Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004) Lynne Rienner, Boulder, CO, 341-55.
- Fassbender, Bardo, 'Uncertain Steps into a Post-Cold War World: The Role and Functioning of the UN Security Council after a Decade of Measures against Iraq' (2002) 13 *EJIL* 273-303.
- Fausey, Joy K., 'Does the United Nations' Use of Collective Sanctions to Protect Human Rights Violate its own Human Rights Standards?' (1994) 10 *Connecticut JIL* 193-218.
- Fawcett, J.E.S., 'Natural Sanctions in international law' in Alexandrowicz, C.H. (ed), *Grotian Society Papers 1968: Studies in the History of the Law of Nations* (1970) Martinus Nijhoff, The Hague, 83-9.
- Feis, Herbert, *Seen From E.A.: Three International Episodes* (1947) Alfred A. Knopf, New York.
- Fidler, David P., 'Caught Between Traditions: the Security Council in philosophical conundrum' (1996) 17 *Mich. JIL* 411-53.
- Fiéodorowicz, George de, 'Historical Survey of the Application of Sanctions' (1937) 22 *Problems of Peace and War (Grotius Society Papers)* 117-31.
- Fielding, Lois E., 'Taking a Closer Look at Threats to Peace: The Power of the Security Council to Address Humanitarian Crises' (1996) 73 *University of Detroit Mercy LR* 551-68
- Fielding, Lois E., *Maritime Interception and U.N. Sanctions* (1997) Austin & Winfield, San Francisco.
- Financial Action Task Force on Money Laundering, *The Forty Recommendations* (?), Paris.
- Finnis, John, *Natural law and natural rights* (1980) Clarendon Press, Oxford.
- Fishkin, James S., *Tyranny and Legitimacy: a critique of political theories* (1979) Johns Hopkins UP, Baltimore, MD.
- Fishman, Andrew K., 'Between Iraq and a Hard Place: the Use of Economic Sanctions and Threats to International Peace and Security' (1999) 13 *Emory ILR* 687-727
- Fitzgerald, Peter L., 'If Property Rights Were Treated Like Human Rights, They Could Never

- Get Away with This”: Blacklisting and Due Process in U.S. Economic Sanctions Programs’ (1999) 51 *Hastings LJ* 73-169.
- Fitzgerald, Peter L., ‘Managing “Smart Sanctions” Against Terrorism Wisely’ (2002) 36 *New England LR* 957-83
- Fitzmaurice, G.G., ‘The United Nations and the Rule of Law’ (1952) 38 *The Grotius Society Transactions* 135-150.
- Fitzpatrick, Joan, ‘Speaking Law to Power: The War Against Terrorism and Human Rights’ (2003) 14 *EJIL* 241-264
- Forbes, Ian & Hoffman, John (eds), *Political Theory, International Relations, and the Ethics of Intervention* (1993) St.Martin’s Press, New York.
- Forte, David F. (ed.), *Natural Law and Contemporary Public Policy* (1998) Georgetown UP, Washington D.C..
- Fox, Gregory H., & Roth, Brad R., *Democratic Governance and International Law* (2000) Cambridge UP, Cambridge, UK.
- Fox, Hazel (ed.), *The Changing Constitution of the United Nations* (1997) The British Institute of International and Comparative Law, London.
- Franck, Thomas M., ‘Dr. Pangloss meets the Grinch: a pessimistic comment on Harold Koh’s optimism’ (1998) 35 *Houston Law Review* 683-98.
- Franck, Thomas M., ‘NATO’s Kosovo Intervention: Lessons of Kosovo’ (1999) 93 *AJIL* 857-60.
- Franck, Thomas M., ‘Of Gnats and Camels: Is there a Double Standard at the United Nations?’ (1984) 78 *AJIL* 811-33.
- Franck, Thomas M., ‘The “powers of appreciation”: who is the ultimate guardian of UN legality?’ (1992) 86 *AJIL* 519-23.
- Franck, Thomas M., ‘The emerging right to democratic governance’ (1992) 86 *AJIL* 46-91.
- Franck, Thomas M., ‘The Political and the Judicial Empires: Must There be Conflict Over Conflict-Resolution?’ in Al-Nauimi, Najeeb & Meese, Richard (eds), *International Legal Issues Arising Under the United Nations Decade of International Law* (1995) Martinus Nijhoff, The Hague, 621-32.
- Franck, Thomas M., *Fairness in International Law and Institutions* (1995) Oxford UP, Oxford.
- Franck, Thomas M., *The Power of Legitimacy Among Nations* (1990) Oxford UP, Oxford.
- Frankenburg, Günter, ‘Remarks on the philosophy and politics of public law’ (1996?) *Legal Studies* 177-187.
- Fraunces, Michael G., ‘The International Law of Blockade: New Guiding Principles in Contemporary State Practice’ (1992) 101 *Yale L.J.* 893-918.
- Friedman, Milton, *Capitalism and Freedom* (1962) University of Chicago Press, Chicago.
- Frowein, Jochen A., ‘Implementation of Security Council Resolutions taken under Chapter VII in Germany’ in Riedel, Eibe (ed.), *German Reports on Public Law* (1998) Nomos Verlagsgesellschaft, Baden-Baden.
- Frowein, Jochen A., ‘Implementation of Security Council Resolutions taken under Chapter VII in Germany’, in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 253-65.
- Frowein, Jochen A., ‘Opening Remarks: Sanctions and Human Rights Law’, in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 125-7.
- Frug, Mary Joe, *Postmodern Legal Feminism* (1992) Routledge, NY.
- Fuller, Lon L., ‘Positivism and Fidelity to Law: a Reply to Professor Hart’ (1958) 71 *Harvard Law Review* 630-72.
- Fuller, Lon L., *The Morality of Law* (1969) Yale UP, New Haven, Conn..
- Galloway, Diane, ‘Report on Working Group 3: Monitoring and Administering Financial Sanctions Through UN Bodies’, in *Expert Seminar on Targeting UN Financial*

- Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 45-51.
- Galtung, Johan, 'On the Effects of Economic Sanctions: With Examples from the Case of Rhodesia' in Nincic, Miroslav & Wallensteen, Peter, *Dilemmas of Economic Coercion* (1983) Prager, New York, 17-60.
- Garcia, Soledad (ed.), *European Identity and the Search for Identity* (1993) St. Martins Press, NY.
- Gardam, Judith G., 'Legal Restraints on Security Council Military Enforcement Action' (1996) 17 *Mich. JIL* 285-322.
- Garfield, Richard & Santanna, Sarah, 'The Impact of the Economic Crisis and the US Embargo on Health in Cuba' (1997) 87 *American Journal of Public Health* 15-20.
- Garfield, Richard M., 'Suffer the Innocents: International economic sanctions can inflict more deaths than warfare, particularly among children' (January/February 1999) *The Sciences* 19-23.
- Garfield, Richard, 'Changes in Mortality in Iraq in the 1990s: Assessing the Impact of the Economic Sanctions' (1999).
- Garfield, Richard, 'Morbidity and mortality among Iraqi children from 1990 through 1998', posted on-line at: <<http://fourthfreedom.org/sanctions/garfield.html>>
- Garfield, Richard, 'The Impact of Economic Embargoes on the Health of Women and Children' (1997) 52 *JAMWA* 181-4.
- Garfield, Richard, Devin, Julia, & Fausey, Joy, 'The Health Impact of Economic Sanctions' (1995) 72 *Bulletin of the New York Academy of Medicine* 454-69.
- Gaul, Matthew J., 'Regulating the New Privateers: Private Military Service Contracting and the Modern Marque and Reprisal Clause' (1998) 31 *Loyola of Los Angeles Law Review* 1489-1522.
- Genugten, Willem J.M. van & Groot, Gerard A. de (eds), *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights* (1999) Intersentia, Antwerp.
- Genugten, Willem J.M. van, Groot, Gerard A. de & Lavrijssen, Saskia, 'Guidelines on the Future Use of Sanctions: an Evaluation' in Genugten, Willem J.M. van & Groot, Gerard A. de (eds), *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights* (1999) Intersentia, Antwerp, 135-52.
- George, Alexander L., *Forceful Persuasion: coercive diplomacy as an alternative to war* (1991) US Institute of Peace Press, Washington, DC.
- George, Robert P., & Wolfe, Christopher (eds), *Natural Law and Public Reason* (2000) Georgetown UP, Washington D.C..
- George, Robert P., *In Defense of Natural Law* (1999) Clarendon Press, Oxford.
- Georgiev, Dencho, 'Letter' (1989) 83 *AJIL* 554.
- Georgiev, Dencho, 'Politics or Rule of Law: Deconstructing Legitimacy in International Law' (1993) 4 *EJIL* 1-14.
- Geusau, Frans A.M. Alting von, 'Recent and Problematic: the imposition of sanctions by the UN Security Council' in Genugten, Willem J.M. van & Groot, Gerard A. de (eds), *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights* (1999) Intersentia, Antwerp, 1-18.
- Gibbons, Elizabeth & Garfield, Richard, 'The Impact of Economic Sanctions on Health and Human Rights in Haiti, 1991 - 1994'.
- Gibbons, Elizabeth D., *Sanctions in Haiti: human rights and democracy under assault* (1999) Praeger, Westport, CT.
- Goodin, Robert E., & Pettit, Philip (eds), *A Companion to Contemporary Political Philosophy* (1995) Blackwell, Cambridge, Mass.
- Goodin, Robert E., *Green Political Theory* (1990) Polity Press, Oxford.

- Gordon, Joy, 'Sanctions as siege warfare' *The Nation*, March 22 1999. This article can be found on-line at: <<http://www.globalpolicy.org/security/sanction/iraq1/iraq12.htm>>.
- Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague.
- Gowlland-Debbas, Vera, 'Security Council Enforcement Action and Issues of State Responsibility' (1994) 43 *ICLQ* 55-98.
- Gowlland-Debbas, Vera, 'Security Council Enforcement Measures Under Chapter VII of the Charter: a Legal Framework', Paper presented at Colloquium on "International Sanctions - Rationale and Impacts", organised by the Institute for Global Leadership, Geneva, 7-8 November 1996 [on file with author].
- Gowlland-Debbas, Vera, 'The Functions of the United Nations Security Council in the International Legal System' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 277-313.
- Gowlland-Debbas, Vera, 'The Relationship Between the International Court of Justice and the Security Council in Light of the *Lockerbie* Case' (1994) 88 *AJIL* 643-77.
- Gowlland-Debbas, Vera, 'UN Sanctions and International Law: An Overview', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 1-28.
- Gowlland-Debbas, Vera, *Collective Responses to Illegal Acts in International Law: United Nations Action in the Question of Southern Rhodesia* (1990) Martinus Nijhoff, Dordrecht.
- Graham-Brown, Sarah, *Sanctioning Saddam: the Politics of Intervention in Iraq* (1999) I.B. Tauris, NY.
- Gray, J., *Liberalism* (1986) Open UP, Milton Keynes.
- Graycar, Regina, & Morgan, Jenny, *The Hidden Gender of Law* (1990) Federations Press, Annandale, N.S.W..
- Greenwood, Christopher, 'Ensuring Compliance with the Law of Armed Conflict' in Butler, William E. (ed.), *Control Over Compliance With International Law* (1991) Martinus Nijhoff, Dordrecht, 195-204.
- Greenwood, Christopher, 'New World Order or Old?: the Invasion of Kuwait and the Rule of Law' (1992) 55 *Modern LR* 153-78.
- Greenwood, Christopher, 'The Impact of Decisions and Resolutions of the Security Council on the International Court of Justice' in Heere, Wybo P. (ed.), *International Law and the Hague's 750th Anniversary* (1999) T.M.C. Asser Press, The Hague, 81-6.
- Griffiths, Gene, 'The Experience of the ICAO in Implementation', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 201-3.
- Groom, A.J.R., Newman, Edward, & Taylor, Paul, 'Burdensome Victory: the United Nations and Iraq' in Bourantonis, Dimitris, & Euriviades, Mrios (eds), *A United Nations for the Twenty-first Century* (1996) Kluwer, The Hague, 149-67.
- Guinier, Lani, *The Tyranny of the Majority: fundamental fairness in representative democracy* (1994) Free Press, NY.
- Haakonssen, Knud, *Natural Law and Moral Philosophy* (1996) Cambridge UP, Cambridge.
- Haas, Ernst B., *When Knowledge is Power: three models of change in international organizations* (1990) University of California Press, Berkeley.
- Haass, Richard N.(ed.), *Economic sanctions and American diplomacy* (1998) Council on Foreign Relations, New York.
- Haass, Richard N., 'Sanctioning Madness' (Nov-Dec 1997) *Foreign Affairs*.
- Haass, Richard N., 'Sanctions Almost Never Work' (June 19, 1998) *Wall Street Journal*.
- Habermas, Jürgen, 'What does a Legitimation crisis mean today? Legitimation Problems in late Capitalism' in Connolly, William (ed.), *Legitimacy and the state* (1984) NYU Press, New York, 135-55.

- Habermas, Jürgen, *Communication and the Evolution of Society* (1979: translated by Thomas McCarthy) Beacon Press, Boston.
- Habermas, Jürgen, *Legitimation Crisis* (1975: English edition, translated by Thomas McCarthy) Beacon Press, Boston.
- Hall, William E., *A Treatise in International Law* (1909: 6th ed.; edited by Atlay, J.B.) Clarendon Press, Oxford.
- Halliday, Denis J., 'Iraq and the UN's Weapon of Mass Destruction' (February 1999) *Current History* 65-8.
- Halliday, Denis, 'Afterword', in Arnove, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA, 239-40.
- Hamnett, Ian, *Chieftainship and legitimacy; an anthropological study of executive law in Lesotho* (1975), Routledge & K. Paul, Boston, MA.
- Harland, Richard, *Superstructuralism: The Philosophy of Structuralism and Post-structuralism* (1987) Methuen, NY.
- Harley, John Eugene, *The League of Nations and the New International Law* (1921) OUP, New York.
- Hart, H.L.A., 'Lon L. Fuller: *The Morality of Law*' in Hart, H.L.A., *Essays in Jurisprudence and Philosophy* (1983) Clarendon Press, Oxford, 343-64.
- Hart, H.L.A., 'Positivism and the separation of law and morals' (1958) 71 *Harvard Law Review* 593-629.
- Hart, H.L.A., *Essays in Jurisprudence and Philosophy* (1983) Clarendon Press, Oxford.
- Hart, H.L.A., *The Concept of Law* (1994 - 2nd ed.) Clarendon Press, Oxford.
- Hasenclever, Andreas, Mayer, Peter, & Rittberger, Volker, *Theories of International Regimes* (1997) Cambridge UP, Cambridge.
- Hassner, Pierre, 'Refugees: a special case for cosmopolitan citizenship?' in Archibugi, Daniele, Held, David and Köhler, Martin (eds), *Re-imagining political community: studies in cosmopolitan democracy* (1998) Polity Press, Cambridge UK, 273 - 86.
- Hazelzet, Hadewych, 'Assessing the Suffering from 'Successful' Sanctions: an ethical approach' in Genugten, Willem J.M. van & Groot, Gerard A. de (eds), *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights* (1999) Intersentia, Antwerp, 71-96.
- Heere, Wybo P. (ed.), *International Law and the Hague's 750th Anniversary* (1999) T.M.C. Asser Press, The Hague.
- Heiskanen, Veijo, *International Legal Topics* (1992) Lakimiesliiton Kustannus, Helsinki.
- Henkin, Louis, *International Law: Politics and Values* (1995) Martinus Nijhoff, Dordrecht.
- Hermele, Kenneth, & Odén, Bertil, *Sanctions Dilemmas: some implications of sanctions against South Africa* (1988) Scandinavian Institute of African Studies, Uppsala.
- Higgins, A. Pearce, *Studies in International Law and Relations* (1928) Cambridge UP, Cambridge, UK.
- Higgins, Rosalyn, 'The UN Security Council and the Individual State' in Fox, Hazel (ed.), *The Changing Constitution of the United Nations* (1997) The British Institute of International and Comparative Law, London, 43-51.
- Higgins, Rosalyn, *Problems and process: international law and how we use it* (1994) Clarendon Press, Oxford.
- Highley, Albert E., *The Actions of the States Members of the League of Nations in Application of Sanctions Against Italy, 1935/1936* (1938) Journal de Genève, Geneva.
- Hilderbrand, Robert C., *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security* (1990) UNC Press, Chapel Hill, NC.
- Hindmarsh, Albert E., *Force in Peace: Force short of war in international relations* (1933) Kennikat Press, London.

- Hobbes, Thomas, *Leviathan* (1651) (1998: edited by J.C.A. Gaskin) OUP, Oxford.
- Hoffman, John, 'Legitimate Intervention and Illegitimate States: sanctions against South Africa' in Forbes, Ian & Hoffman, John (eds), *Political Theory, International Relations, and the Ethics of Intervention* (1993) St.Martin's Press, New York, 157-66.
- Hogan, Albert E., *Pacific Blockade* (1908) Clarendon Press, Oxford.
- Holmes, Oliver Wendell, 'The Path of the Law' in Holmes, Oliver Wendell, *Collected Legal Papers* (1920) Harcourt, Brace and Howe, NY, 167-202.
- Holmes, Oliver Wendell, *Collected Legal Papers* (1920) Harcourt, Brace and Howe, NY.
- Horwitz, Morton J., 'The Historical Contingency of the Role of History' (1981) 90 *Yale Law Journal* 1057-59.
- Horwitz, Morton J., *The Transformation of American Law, 1780-1860* (1977) Harvard UP, Cambridge, Mass..
- Hoskins, Eric & Nutt, Samantha, *The Humanitarian Impacts of Economic Sanctions on Burundi* (1997) Thomas J. Watson Jr. Institute for International Studies, Providence, RI.
- Hoskins, Eric, 'The Humanitarian Impacts of Economic Sanctions and War in Iraq', in Weiss, Thomas G., Cortright, David, Lopez, George A., & Minear, Larry (eds.), *Political Gain and Civilian Pain: humanitarian impacts of economic sanctions* (1997) Rowman & Littlefield, Lanham, MD, 91-147.
- Howard, Jessica & Oswald, Bruce, *The Rule of Law on Peace Operations* (2003) Melbourne, Australia [on-file with author].
- Howse, Robert, 'The Road to Baghdad is Paved with Good Intentions' (2002) 13 *EJIL* 89-92.
- Huaraka, Tunguru, 'Implementation of Sanctions – The Experience of Africa', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 349-60.
- Hufbauer, Gary Clyde, Schott, Jeffrey J. & Elliott, Kimberly Ann, *Economic Sanctions Reconsidered* (1990 - 2nd ed.), Institute for International Economics, Washington DC.
- Hufbauer, Gary Clyde, Schott, Jeffrey J. & Elliott, Kimberly Ann, *Economic Sanctions Reconsidered* (1985), Institute for International Economics, Washington DC.
- Hull, Richard E., *Imposing International Sanctions: Legal Aspects and Enforcement by the Military* (March 1997) Institute for National Strategic Studies
- Hulme, Derick L., *The Political Olympics: Moscow, Afghanistan, and the 1980 U.S. boycott* (1990) Praeger, NY.
- Hulton, Susan C., 'Council Working Methods and Procedure', in Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004) Lynne Rienner, Boulder, CO, 237-51.
- Hume, David, *A Treatise of Human Nature* (1740) (2000: edited by Norton, D.F.).
- Hunt, Alan, 'The Theory of Critical Legal Studies' (1986) 6 *Oxford Journal of Legal Studies* 1-45.
- Hurd, Ian, 'Legitimacy and Authority in International Politics' (1999) 53 *International Organization* 379-408.
- Hurrell, Andrew, 'International Law and the Changing Constitution of International Society' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 327-47.
- Hurst, James Willard, *The legitimacy of the business corporation in the law of the United States, 1780-1970* (1970) UP of Virginia Charlottesville, VA.
- Hyde, Alan, 'The Concept of Legitimation in the Sociology of Law' (1983) *Wis. LR* 379-426.
- Hyde, Charles Cheney & Wehle, Louis B., 'The Boycott in Foreign Affairs' (1933) 27 *AJIL* 1-10.
- International Law Commission, Discussion of the ILC concerning Article 30 of the Draft Articles on State Responsibility, *Yearbook of the International Law Commission* (1979), vol. 1, 55-8.

- Iraq* (1999) 316 *The New Internationalist* (September 1999)
- Jabloner, Clemens, 'Kelsen and his Circle: the Viennese Years' (1998) 9 *EJIL* 368-85.
- Jack, D.T., *Studies in Economic Warfare* (1940), King & Son, London.
- Janis, Mark W., *An Introduction to International Law* (1999 - 3rd edition) Aspen Law & Business, New York.
- Jayakar, Krishna, 'Comment: Globalization and the Legitimacy of International Telecommunications Standard-Setting Organizations' (1998) 5 *Ind. J. Global Leg. Stud.* 711-38.
- Jeffries, Ian (ed), *Problems of Economic and Political Transformation in the Balkans* (1996) Pinter, NY.
- Jeker, Rolf, 'Chairman's conclusions', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 25-7.
- Jeker, Rolf, 'Chairman's report', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 29-38.
- Jeker, Rolf, 'How Can Financial Assets and Financial Transactions be Controlled?', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 75-9.
- Jeker, Rolf, 'Lessons Learned and Definitions', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 67-74.
- Jessup, Philip C., 'A Half-Century of Efforts to Substitute Law for War' (1960) 99 *Recueil des Cours* 3-20.
- Johnstone, Ian, *Aftermath of the Gulf War: an assessment of UN action* (1994) International Peace Academy, New York.
- Jones, Thomas David, 'The International Law of Maritime Blockade -- A Measure of Naval Economic Interdiction' (1983) 26 *Howard Law Journal* 759-79.
- Joyner, Christopher C. (ed), *The United Nations and International Law* (1997) University Press, Cambridge UK.
- Joyner, Christopher C., 'Collective Sanctions as Peaceful Coercion: lessons from the United Nations experience' (1995) 16 *AYBIL* 241-270.
- Joyner, Christopher C., 'Sanctions and International Law' in Cortright, David & Lopez, George (eds), *Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World* (1993) Goshen, IN, 73-87.
- Joyner, Christopher C., 'The United Nations as International Law-Giver' in Joyner, Christopher C. (ed), *The United Nations and International Law* (1997) University Press, Cambridge UK, 432-57.
- Kahn, Bonnie Menes, *My Father Spoke French: nationalism and legitimacy in Alsace, 1871-1914* (1990) Garland, NY.
- Kairys, David (ed.), *The Politics of Law: a Progressive Critique* (1990 - revised edition) Pantheon, NY.
- Kaldor, Mary, *New and Old Wars: organized violence in a global era* (1999) Polity Press, Cambridge.
- Kalpyris, Eugenios, 'Les Aspects Juridiques des sanctions adoptées par le Conseil de Sécurité des Nations Unies' in Kalpyris, Eugenios, Vork, Richard, & Napolitano, Antonio, *Les Sanctions des Nations Unies dans le Conflit de l'ex-Yougoslavie* (1995) Bruylant,

- Brussels, 1-73.
- Kelly, P.J., *Utilitarianism and Distributive Justice* (1990) Oxford UP, Oxford.
- Kelman, M., *A Guide to Critical Legal Studies* (1987) Harvard UP, Cambridge, Mass..
- Kelsen, Hans, 'Sanctions in International Law under the Charter of the United Nations' (1946) 31 *Iowa LR* 499-543.
- Kelsen, Hans, 'The Old and the New League: the Covenant and the Dumbarton Oaks Proposals' (1945) 39 *AJIL* 45-83.
- Kelsen, Hans, 'Collective Security and Collective Self-Defence under the Charter of the United Nations' (1948) 42 *AJIL* 783-96.
- Kelsen, Hans, *General Theory of Law and State* (1961) Russell, NY.
- Kelsen, Hans, *The Law of the United Nations: a Critical Analysis of its Fundamental Problems* (1951) Steven & Sons, London.
- Kennedy, David W., 'A new world order: yesterday, today, and tomorrow' (1994) 4 *Transnational Law & Contemporary Problems* 329-76.
- Kennedy, David, 'International Law and the Nineteenth Century: History of an Illusion' (1996) 65 *Nordic JIL* 385-420.
- Kennedy, David, 'New Approaches to Comparative Law: Comparativism and International Governance' (1997) *Utah L. Rev.* 545-637.
- Kennedy, David, 'When Renewal Repeats: Thinking Against the Box' (2000) 32 *NYUJILP* 335-500.
- Kennedy, Duncan, 'Psycho-Social C.L.S.' (1985) 6 *Cardozo Law Review* 1013-31; Tushnet, Mark, 'Critical Legal Studies: a Political History' (1991) 100 *Yale Law Journal* 1515-44.
- Kennedy, Duncan, 'The Structure of Blackstone's Commentaries' (1979) 28 *Buffalo Law Review* 209-382.
- Keohane, Robert O., 'International Relations and International Law: Two Optics' (1997) 38 *Harv. Int'l L.J.* 487-502.
- Kerr, William A., & Gaisford, James D., 'A Note on Increasing the Effectiveness of Sanctions' (1993) *Journal of World Trade* 169-76.
- Kingsbury, Benedict, 'Legal Positivism as Normative Politics: International Society, Balance of Power, and Lassa Oppenheim's Positive International Law' (2002) 13 *EJIL* 401-36.
- Kingsbury, Benedict, 'Sovereignty and Inequality' (1998) 9 *EJIL* 599-625.
- Kingsbury, Benedict, 'The Concept of Compliance as a Function of Competing Conceptions of International Law' (1998) 19 *Mich. J. Int'l L.* 345-72.
- Kirkpatrick, Jeane J., *Legitimacy and Force* (1988) Transaction Books, New Brunswick, USA.
- Kittrie, Nicholas N., *The War Against Authority: from the crisis of legitimacy to a new social contract* (1995) Johns Hopkins University Press, Baltimore, MD.
- Knight, W. Andy, *The United Nations and Arms Embargoes Verification* (1998) Edwin Mellen, Lewiston, NY.
- Knippenberg, Joseph M., 'The Politics of Kant's Philosophy' in Beiner, Ronald, & Booth, William James, *Kant & Political Philosophy* (1993) Yale UP, New Haven 155-72.
- Knutsen, Torbjörn L., *A History of International Relations Theory: An Introduction* (1992) Manchester UP, Manchester.
- Köchler, Hans, 'Ethical Aspects of Sanctions in International Law' (1995) XLVI *Review of International Affairs* 1-4.
- Köchler, Hans, *Democracy and the international rule of law: propositions for an alternative world order* (1995) Springer-Verlag, Wien.
- Köchler, Hans, *Economic Sanctions and Development* (1997) International Progress Organization, Vienna.
- Koh, Harold Hongju, 'On American Exceptionalism' (2003) *Stanford LR* 1479-1527
- Koh, Harold Hongju, 'Why do nations obey international law?' (1997) 106 *Yale Law Journal*

2599 - 2659.

- Köhler, Martin, 'From the National to the Cosmopolitan Public Sphere' in Archibugi, Daniele, Held, David and Köhler, Martin (eds), *Re-imagining political community: studies in cosmopolitan democracy* (1998) Polity Press, Cambridge UK, 231 - 51.
- Kohona, Palitha T.B., 'The international rule of law and the role of the United Nations' (2002) 36 *International Lawyer* 1131-44.
- Kooijmans, Peter, 'Provisional Measures of the UN Security Council' in Denters, Erik & Schrijver, Nico (eds), *Reflections on International Law from the Low Countries* (1998) Martinus Nijhoff, The Hague, 289-300.
- Korff, Baron S.A., 'An Introduction to the History of International Law' (1924) 18 *AJIL* 246-59.
- Korhonen, Outi, 'Liberalism and International Law: A Centre Projecting a Periphery' (1996) 65 *Nordic JIL* 481-532.
- Koskenniemi, Martti (ed.), *International Law* (1992) New York University Press, New York.
- Koskenniemi, Martti, "'The lady doth protest too much": Kosovo, and the turn to ethics in international law' (2002) 65 *Modern LR* 159-75.
- Koskenniemi, Martti, 'Advisory Opinions of the International Court of Justice as an Instrument of Preventive Diplomacy' in Al-Nauimi, Najeeb & Meese, Richard (eds), *International Legal Issues Arising Under the United Nations Decade of International Law* (1995) Martinus Nijhoff, The Hague, 599-619.
- Koskenniemi, Martti, 'Carl Schmitt, Hans Morgenthau, and the Image of Law in International Relations' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 17-34.
- Koskenniemi, Martti, 'International Law in a Post-Realist Era' (1995) 16 *AYBIL* 1-19.
- Koskenniemi, Martti, 'Introduction' in Koskenniemi, Martti (ed.), *International Law* (1992) New York University Press, New York, xi-xxxii.
- Koskenniemi, Martti, 'Letter to the editors on "Method in international law"' (1999) 93 *AJIL* 351-61.
- Koskenniemi, Martti, 'The Place of Law in Collective Security: Reflections on the Recent Activity of the Security Council' in Paolini, Albert J., Jarvis, Anthony P., & Reus-Smit, Christian (eds), *Between Sovereignty and Global Governance* (1998) Macmillan, London, 35-59.
- Koskenniemi, Martti, 'The Place of Law in Collective Security' (1996) 17 *Mich. JIL* 455-90.
- Koskenniemi, Martti, 'The Police in the Temple. Order, Justice and the UN: A Dialectical View' (1995) 6 *EJIL* 325-48.
- Koskenniemi, Martti, 'The power of legitimacy among nations' (book review) (1992) 86 *AJIL* 175-9.
- Koskenniemi, Martti, *From Apology to Utopia: The Structure of International Legal Argument* (1989) Lakimiesliiton Kustannus, Helsinki.
- Koskenniemi, Martti, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (2002) Cambridge UP, Cambridge, UK.
- Kozal, Peggy, 'Is the continued use of sanctions as implemented against Iraq a violation of international human rights?' (2000) 28 *DJILP* 383-400
- Kraemer, Jay R., 'Supreme Court Rules Invalid State Economic Sanctions' (June 29, 2000) Fried, Frank, Harris, Shriver & Jacobson, Washington, D.C..
- Krafft, Mathias-Charles, 'Mise en œuvre par un Etat non membre des Nations Unies – le cas de la Suisse', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 361-8.
- Krasner, Stephen D., 'Realist Views of International Law' (2002) 96 *ASIL Proceedings* 265-8
- Kratochwil, Friedrich V., 'How Do Norms Matter?' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 35-68.
- Kuhn, Michele, 'UN Sanctions and ICRC's Mandate', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The

- Hague, 211-19.
- Kulesa, Manfred & Starck, Dorothee, *Peace Through Sanctions?* (1998) Development and Peace Foundation, Bonn.
- Kulesa, Manfred, 'Potentials, Problems and Prospects of Various Types of Travel Sanctions', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 195-200.
- Kunz, Josef L., 'Sanctions in International Law' (1960) 54 *AJIL* 324-47.
- Kurzweil, Edith, *The Age of Structuralism: Lévi-Strauss to Foucault* (1980) Columbia UP, NY.
- Kuyper, Pieter Jan, 'International Legal Aspects of Economic Sanctions' in Sarcevic, Petar & van Houtte, Hans, *Legal Issues in International Trade* (1990) Martinus Nijhoff, Dordrecht, 145-75.
- Kuyper, Pieter Jan, *The Implementation of International Sanctions; the Netherlands and Rhodesia* (1978) Sijthoff & Noordhoff, Alphen aan den Rijn.
- L'Institut de Droit International, 'Rapport de M. Perels sur le blocus pacifique' (1888) 9 *L'Annuaire de L'Institut de Droit International* 276-86.
- Lachs, Manfred, *The Teacher in International Law* (1982) Martinus Nijhoff, The Hague.
- Landauer, Carl, 'Political Questions/Judicial Answers: does the rule of law apply to foreign affairs?' (book review) (1993) 87 *AJIL* 465-7.
- Landgren, Karin, 'UN Sanctions – Dilemmas for UNICEF', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 205-10.
- LaRae-Perez, Cassandra, 'Economic Sanctions as a Use of Force: Re-evaluating the Legality of Sanctions from an Effects-Based Perspective' (2002) *Boston University ILJ* 161-88
- Larus, Joel (ed.), *From Collective Security to Preventive Diplomacy* (1965) John Wiley, NY.
- Lawler, Peter, 'The Core Assumptions of "Cooperative Security"' in Lawson, Stephanie (ed), *The New Agenda for Global Security: Cooperating for Peace and Beyond* (1995) Allen & Unwin, St.Leonard's, NSW, 39-57.
- Lawrence, T.J., *The Principles of International Law* (1923: 7th ed.: revised by Winfield, Percy H.) D.C. Heath & Co., Boston.
- Lawson, Stephanie (ed), *The New Agenda for Global Security: Cooperating for Peace and Beyond* (1995) Allen & Unwin, St.Leonard's, NSW.
- League of Nations Information Section, *The League From Year to Year* (1935) League of Nations Information Section, Geneva, 53-88.
- Leaver, Richard, 'Economic Sanctions, Australian Policy and United Nations Peace Enforcement' in Woodhouse, Tom, Bruce, Robert, & Dando, Malcolm (eds), *Peacekeeping and Peacemaking: Towards Effective Intervention in post-Cold War Conflicts* (1997) St.Martin's Press, New York, 253-68.
- Leaver, Richard, 'Sanctions, Enforcement, and the Blue Book' in Lawson, Stephanie (ed), *The New Agenda for Global Security: Cooperating for Peace and Beyond* (1995) Allen & Unwin, St.Leonard's, NSW, 89-100.
- Leben, Charles, 'Hans Kelsen and the Advancement of International Law' (1998) 9 *EJIL* 287-305.
- Leubsdorf, John, 'Gandhi's Legal Ethics' (1999) 51 *Rutgers L. Rev.* 923-39.
- Lévi-Strauss, Claude, *Structural Anthropology* (1963) Basic Books, NY.
- Lévi-Strauss, Claude, *The Savage Mind* (1966) Weidenfeld & Nicholson, London.
- Leyton-Brown, David (ed), *The Utility of International Economic Sanctions* (1987) Croom Helm, Beckenham, Kent.
- Leyton-Brown, David, 'Lessons and policy considerations about economic sanctions' in Leyton-Brown, David (ed), *The Utility of International Economic Sanctions* (1987) Croom Helm, Beckenham, Kent, 303-10.
- Libby, Frederick J., 'Pacifism and Sanctions' in *Toward Peace and Justice: A symposium on*

- Methods for the Prevention of War and the Achievement of International Justice* (1937) Friends' Peace Committee, Philadelphia, PA, 24-30.
- Lichtheim, George, *A Short History of Socialism* (1970) Weidenfeld & Nicholson, London.
- Liebman, Charles S. (ed.), *Religious and Secular: Conflict and Accommodation between Jews in Israel* (1990) Keter Publishing House, Jerusalem.
- Lilla, Mark (ed.), *New French Thought: Political Philosophy* (1994) Princeton UP, Princeton, NJ.
- Lindsay, James, 'Trade sanctions as policy instruments' (1986) 30 *International Studies Quarterly* 153-73.
- Lipset, Seymour Martin, 'Social Conflict, Legitimacy, and Democracy' in Connolly, William (ed.), *Legitimacy and the state* (1984) NYU Press, New York, 88-103.
- Lobel, Jules & Ratner, Michael, 'Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires and the Iraqi Inspection Regime' (1999) 93 *AJIL* 124-54.
- Locke, John, 'A Letter on Toleration' in *Second Treatise on Government* (1689) (1956: Blackwell, Oxford, edited by J.M. Gough).
- Lorenz, Joseph P., *Peace, Power and the United Nations* (1999) Westview Press, Boulder, CO.
- Losman, Donald L., 'The effects of economic boycotts' (1972) *Lloyds Bank Review* 27-41.
- Lowe, Vaughan, 'Res Judicata and the Rule of Law in International Arbitration' (1996) 8 *African JICL* 38-50.
- Lowe, Vaughan, 'The Politics of Law-Making: Are the Method and Character of Norm Creation Changing?' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 207-26.
- Lowenfeld, Andreas, 'Unilateral versus Collective Sanctions: An American's Perception', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 95-103.
- Loy, Maria, 'Proper and Prompt National Implementation of Arms Embargoes: The German Case', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 135-8.
- Luck, Edward C., 'Choosing Words Carefully: Arms Embargoes and the UN Security Council', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 115-34.
- Lumb, D., 'Legality and Legitimacy: the Limits of the Duty of Obedience to the State' in Alexandrowicz, C.H. (ed), *Grotian Society Papers 1968: Studies in the History of the Law of Nations* (1970) Martinus Nijhoff, The Hague, 52-82.
- Lynch, Colum, "U.S. Seeks to Take 6 Names Off U.N. Sanctions List; Administration Was Criticized for Offering Little Proof That Individuals, Groups Aided Al Qaeda" (22 August 2002) *The Washington Post*
- Lyons, David (ed.) *Rights* (1979) University of California Press, Belmont.
- Lyons, David, *Moral aspects of legal theory* (1993) Cambridge UP, Cambridge.
- Lyotard, Jean-François, *The Differend: Phrases in Dispute* (1988) Manchester UP, Manchester.
- Lyotard, Jean-François, *The Postmodern Condition: A Report on Knowledge* (1984) University of Minnesota Press, Minneapolis.
- Lysén, Göran, 'Targeted UN Sanctions: On the issue of legal sources and their application and also some procedural matters' (2002) Uppsala [available at www.jur.uu.se/sii/index.html] (publications): last visited on 17 July 2003]
- Maccoby, Simon, 'Reprisals as a Measure of Redress Short of War' (1924) 2 *Cambridge Law Journal* 60-73.
- Macdonnell, John, 'Some Notes on Blockade' (1915) 1 *Problems of Peace and War (Grotius Society Papers)* 93-104.
- MacKay, M. Jennifer, 'Economic Sanctions: are they actually enforcing international law in

- Serbia-Montenegro?' (1995) 3 *Tul JICL* 203-236.
- Macpherson, C.B., *The Rise and Fall of Economic Justice* (1985) Oxford UP, Oxford.
- Mahbubani, Kishore, 'The Permanent and Elected Council Members', in Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004) Lynne Rienner, Boulder, CO, 257-66.
- Mainsbridge, Jane & Okin, Susan Moller, 'Feminism' in Goodin, Robert E., & Pettit, Philip (eds), *A Companion to Contemporary Political Philosophy* (1995) Blackwell, Cambridge, Mass, 269-90.
- Majlessi, Sherwin, 'Use of Economic Sanctions under International Law: A Contemporary Assessment' (2001) *Canadian YBIL* 253-331.
- Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options. Results from the Stockholm Process on the Implementation of Targeted Sanctions* (2003) Uppsala University, Uppsala. Available on-line at: <http://www.smartsanctions.se/reports/Final%20report%complete.pdf>.
- Malanczuk, Peter, 'Reconsidering the Relationship between the International Court of Justice and the Security Council' in Heere, Wybo P. (ed.), *International Law and the Hague's 750th Anniversary* (1999) T.M.C. Asser Press, The Hague, 87-99.
- Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004) Lynne Rienner, Boulder, CO.
- Malone, David M., *Decision-Making in the UN Security Council: the Case of Haiti, 1990-1997* (1998) Clarendon Press, Oxford.
- Mandela, Nelson, 'The Rule of Law – Cornerstone of Economic Progress', in Harper, J. Ross (ed.), *Global Law in Practice* (1997), Kluwer Law International, Cambridge, MA, 119-32.
- Mangaliso, Nomazengele A., 'Cultural Boycotts and Political Change' in Crawford, Neta C. & Klotz, Audie (eds), *How Sanctions Work; Lessons from South Africa* (1999) St. Martin's Press, NY, 232-43.
- Mangoldt, Hans von, Rittberger, Volker, & Knipping, Franz, *The United Nations System and its Predecessors* (1997) Oxford UP, Oxford, 2 vols: I: *The United Nations System*; II: *Predecessors of the United Nations*.
- Manin, Bernard, 'On Legitimacy and Political Deliberation' in Lilla, Mark (ed.), *New French Thought: Political Philosophy* (1994) Princeton UP, Princeton, NJ, 186-208.
- Marcus, Alan I., *Agricultural Science and the Quest for Legitimacy: farmers, agricultural colleges, and experiment stations, 1870-1890* (1985) Iowa State UP, Ames, Iowa.
- Marshall, C. Kevin, 'Putting Privateers in Their Place: The Applicability of the Marque and Reprisal Clause to Undeclared Wars' (1997) 64 *U. Chi. L. Rev.* 953-981.
- Martenczuk, Bernd 'The Security Council, the International Court of Justice and Judicial Review: What Lessons from Lockerbie?' (1999) 10 *EJIL* 517-47.
- Martin, Lisa L., & Laurenti, Jeffrey, *The United Nations and Economic Sanctions: Improving Regime Effectiveness* (1997) UNA-USA, New York.
- Martin, Lisa L., *Coercive Cooperation: explaining multilateral economic sanctions* (1992) Princeton UP, Princeton, NJ.
- Matsuda, Mari J. & Kennedy, Randall, 'Racial Critiques of Legal Academia' (1989) 102 *Harvard Law Review* 1745-1819.
- Matsuda, Mari J., 'Public Response to Racist Speech: Considering the Victim's Story' (1989) 87 *Michigan Law Review* 2320-81.
- McClure, Wallace, 'National Economic Independence in the Light of the International Economic Conference' (1927) 21 *AJIL* 668-84.
- McCormack, Timothy L.H., 'The Use of Force' in Blay, Sam, Piotrowicz, Ryszard, & Tsamenyi, B. Martin, *Public International Law: an Australian Perspective* (1997) OUP, Oxford 238-270.
- McDougal, Myres S., & Reisman, W. Michael, *International law essays: a supplement to*

- International law in contemporary perspective* (1981) The Foundation Press, Mineola, NY.
- McGowan, John, *Postmodernism and its Critics* (1991) Cornell UP, Ithaca, NY.
- McIntosh, Steven, 'Sanctions' in Clements, K. & Ward, R. (eds), *Building International Community* (1994) Allen & Unwin, Canberra, 311-18.
- McLean, Edward B., *Common Truths: New Perspectives on Natural Law* (2000) ISI Books, Wilmington, DE.
- McNair, Arnold D., 'The Legal Meaning of War, and the Relation of War to Reprisals' (1926) 11 *Problems of Peace and War (Grotius Society Papers)* 29-51.
- McRae, Heather, Nettheim, Garth, & Beacroft, Laura, *Indigenous Legal Issues* (1997: 2nd edition) LBC Information Services, Sydney.
- Mégret, Frédéric, '“War”? Legal Semantics and the Move to Violence' (2002) 13 *EJIL* 361-99.
- Meijers, H. & Vierdag, E.W. (eds), *Essays on International Law and Relations in Honours of A.J.P. Tammes* (1977) Sijthoff, Leyden.
- Melby, Eric D.K., 'Iraq' in Haass, Richard N.(ed.), *Economic sanctions and American diplomacy* (1998) Council on Foreign Relations, New York, 107-28.
- Melby, Eric D.K., 'Iraq' in Haass, Richard N.(ed.), *Economic sanctions and American diplomacy* (1998) Council on Foreign Relations, New York, 107-28.
- Merelman, Richard M., 'Learning and Legitimacy' (1966) 60 *American Political Science Review* 548-61.
- Mfodwo, Kwame, *Laws, Policies and Institutions Affecting Migrant Workers in the Gulf Co-operation Countries: a critical review* (1998) Social Alert, Brussels.
- Mickelson, Karin, 'Rhetoric and Rage: Third World voices in international legal discourse' (1999) 16 *Wisconsin ILJ* 353-419.
- Mill, J.S., *On Liberty* (1861) (1999: edited by Edward Alexander) Broadview Press, Orchard Park, NY.
- Mill, J.S., *Utilitarianism* (1998: edited by Crisp, Roger) Oxford UP, Oxford.
- Minear, Larry, 'The Morality of Sanctions' in Moore, Jonathan (ed.), *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (1998) Rowman & Littlefield, Lanham, MD, 229-250.
- Minear, Larry, Cortright, David, Wagler, Julia, Lopez, George A., & Weiss, Thomas G., *Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System* (1998) Thomas J. Watson Jr. Institute for International Studies, Providence, RI.
- Mitrany, David, 'The Problem of Peaceful Change and Article 19 of the Covenant' in *Toward Peace and Justice: A symposium on Methods for the Prevention of War and the Achievement of International Justice* (1937) Friends' Peace Committee, Philadelphia, PA, 31-47.
- Mitrany, David, *The Problem of International Sanctions* (1925) OUP, London.
- Miyagawa, Makio, *Do Economic Sanctions Work?* (1992) St. Martin's Press, NY.
- Momtaz, Djamchid, 'La compatibilité des sanctions du Conseil de Sécurité avec le droit international humanitaire', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 223-32.
- Moore, John Norton, 'Crisis in the Gulf: enforcing the rule of law' (1993-4) 15 *Mich JIL* 847-61.
- Moore, John Norton, 'Toward the Rule of Law among Nations' 40 *Virginia JIL* 805-816.
- Moore, John Norton, 'Treaty interpretation, the Constitution and the rule of law' (2001) 42 *VJIL* 163-263.
- Moore, John Norton, 'War Crimes and the rule of law in the Gulf Crisis' (1991) *VJIL* 403-15.
- Moore, Jonathan (ed.), *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (1998) Rowman & Littlefield, Lanham, MD.
- Moulakis, Athanasios (ed.), *Legitimacy/Légitimité* (1985) de Gruyter & Co, Berlin.

- Mueller, Claus, *The politics of communication; a study in the political sociology of language, socialization, and legitimation* (1973) OUP, NY.
- Muldoon, James P., Aviel, JoAnn Fagot, Reitano, Richard, & Sullivan, Earl (eds.), *Multilateral Diplomacy and the United Nations Today* (1999) Westview Press, Boulder, CO.
- Murphy, James M., 'Sanctions in Transition' (2000) Occasional Paper No. 12, The David Davies Memorial Institute of International Studies, London.
- Murphy, John, 'Force and Arms' in Joyner, Christopher C. (ed), *The United Nations and International Law* (1997) University Press, Cambridge UK, 97-130.
- Murray, Gilbert, 'A League of Nations: the First Experiment' in Larus, Joel (ed.), *From Collective Security to Preventive Diplomacy* (1965) John Wiley, NY, 176-86.
- Mutua, Makau Wa, 'Politics and Human Rights: An Essential symbiosis' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 149-75.
- Naess, Arne, *Ecology, Community and Lifestyle* (1988: translated and revised by David Rothenberg) Cambridge UP, Cambridge.
- Nanda, Ved P., 'Civil and Political Sanctions as an Accountability Mechanism for Massive Violations of Human Rights' (1998) 26 DJILP 389-97.
- Nathan, Laurie, 'The Absent Sentry: Sanctions and the Problem of Weak Border Control' in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 101-14.
- Newcomb, Richard, 'Targeting Financial Sanctions', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available online at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 113-19.
- Newcombe, R. Richard, 'Targeted Financial Sanctions: The U.S. Model', in Cortright, David & Lopez, George A. (eds), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD, 41-63.
- Niblock, Tim, *"Pariah States" & Sanctions in the Middle East: Iraq, Libya, Sudan* (2001) Lynne Rienner, Boulder, CO.
- Nippold, Otfried, *The Development of International Law After the World War* (1923) Clarendon Press, Oxford.
- Nolte, Georg, 'The Limits of the Security Council's Powers and its Functions in the International Legal System: Some Reflections' in Byers, Michael (ed.), *The Role of Law in International Politics* (2000) Oxford UP, Oxford, 315-26.
- Normand, Roger, 'A Human Rights Assessment of Sanctions: the case of Iraq, 1990-1997' in Genugten, Willem J.M. van & Groot, Gerard A. de (eds), *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights* (1999) Intersentia, Antwerp, 19-33.
- Normand, Roger, 'Iraqi Sanctions, Human Rights and Humanitarian Law' (July-September 1996) *Middle East Report* 40-43.
- Normand, Roger, 'Sanctions Against Iraq: New Weapon of Mass Destruction' (Spring 1998) 64 *Covert Action* 4-10.
- Norris, Christopher, *Deconstruction: Theory and Practice* (1991) Routledge, London.
- Northedge, F.S., *The League of Nations: Its Life and Times* (1986) Holmes & Meier, NY.
- Nossal, Kim Richard, 'Economic Sanctions in the League of Nations and the United Nations' in Leyton-Brown, David (ed), *The Utility of International Economic Sanctions* (1987) Croom Helm, Beckenham, Kent, 7-22.
- Nossal, Kim Richard, 'Liberal Democratic Regimes, International Sanctions, and Good Governance' in Väyrynen, Raimo (ed.), *Globalization and Global Governance* (1999) Rowman & Littlefield, Lanham, MD, 127-49.
- Nossal, Kim Richard, 'Liberal Democratic Regimes, International Sanctions, and Good Governance' in Väyrynen, Raimo (ed.), *Globalization and Global Governance* (1999) Rowman & Littlefield, Lanham, MD, 127-49.

- Nossal, Kim Richard, *Rain dancing: sanctions in Canadian and Australian foreign policy* (1994) University of Toronto Press, Toronto, 3-30.
- Nussbaum, Arthur, *A Concise History of the Law of Nations* (2nd ed.: 1954) Macmillan, New York.
- O'Connell, Mary Ellen, 'Debating the Law of Sanctions' (2002) 13 *EJIL* 63-79.
- O'Quinn, Robert P., 'A User's Guide to Economic Sanctions', [posted on-line by the Heritage Foundation].
- Oette, Lutz, 'A Decade of Sanctions against Iraq: Never Again! The End of Unlimited Sanctions in the Recent Practice of the UN Security Council' (2002) 13 *EJIL* 93-103.
- Okafor, Obiora Chinedu, 'The Global Process of Legitimation and the Legitimacy of Global Governance' (1997) 14 *Ariz. JICL* 117-140.
- Oppenheim, L., *International Law; a Treatise* (1905) Longmans, Green & Co, London, 2 vols (Vol. I: *Peace*; & Vol. II: *War and Neutrality*).
- Oquendo, Angel Ricardo, 'Corruption and Legitimation Crises in Latin America' (1999) 14 *Conn. JIL* 475-93.
- Orford, Anne, 'Locating the International: Military and Monetary Interventions after the Cold War' (1997) 38 *HILJ* 443-85.
- Orford, Anne, 'The Politics of Collective Security' (1996) 17 *Michigan JIL* 373-409.
- Österdahl, Inger, *Threat to the Peace: the interpretation by the Security Council of Article 39 of the UN Charter* (1998) Iustus Förlag, Uppsala.
- Othman, Maged Taher, *Economic Sanctions in International Law: a legal study of the practice of the USA* (1982) University Microfilms International, Ann Arbor, MI.
- Otunnu, Olara A., 'Maintaining Broad Legitimacy for United Nations Action' in Roper, John et al, *Keeping the Peace in the Post-Cold War Era: Strengthening Multilateral Peacekeeping* (1991) The Trilateral Commission, New York, 67-83.
- Oudraat, Chantal de Jonge, 'The United Nations and Internal Conflict' in Brown, Michael E. (ed), *The International Dimensions of Internal Conflict* (1996) John F. Kennedy School of Government, Cambridge, MA.
- Oudraat, Chantal de Jonge, 'UNSCOM: Between Iraq and a Hard Place?' (2002) 13 *EJIL* 139-52.
- Padover, Saul K. (ed.), *Wilson's Ideals* (1942) American Council on Public Affairs, Washington DC.
- Paolini, Albert J., Jarvis, Anthony P., & Reus-Smit, Christian (eds), *Between Sovereignty and Global Governance* (1998) Macmillan, London.
- Pape, Robert A., 'Why Economic Sanctions Do Not Work' (1997) 22 *International Security* 90-136.
- Pape, Robert A., 'Why Economic Sanctions Still Do Not Work' (1998) 23 *International Security* 66-77.
- Paris, Peter J., *Black Religious Leaders: conflict in unity* (1991) Westminster, Louisville, KY.
- Pateman, Carole, & Gross, Elizabeth (eds), *Feminist Challenges: Social and Political Theory* (1986) Northeastern UP, Boston.
- Paulus, Andreas, 'Realism and International Law: Two optics in need of each other' (2002) 96 *ASIL Proceedings* 269-72.
- Pellet, Alain, 'La responsabilité pénale individuelle, alternative aux sanctions collectives?', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 105-116.
- Pellet, Peter L., 'Sanctions, Food, Nutrition, and Health in Iraq', in Arnove, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA, 185-203.
- Petrie, Donald A., *The Prize Game: Lawful Looting on the High Seas in the Days of Fighting Sail* (1999) Naval Institute Press, Annapolis, MD.
- Pettit, Philip, *Judging Justice: an introduction to contemporary political philosophy* (1980)

- Routledge & Kegan Paul, London.
- Pettman, Ralph, *Commonsense Constructivism* (2000) M.E. Sharpe, Armonk, NY.
- Phillipson, Coleman, *The International Law and Custom of Ancient Greece and Rome* (1911) Macmillan, London (2 vols).
- Piaget, Jean, *Structuralism* (1971) Routledge & K. Paul, London.
- Pilger, John, 'Collateral Damage', in Arnone, Anthony (ed.), *Iraq Under Siege: the Deadly Impact of Sanctions and War* (2002: updated edition) South End Press, Cambridge, MA, 77-83.
- Pires, Jeong Hwa, 'North Korean Time Bomb: Can Sanctions Defuse it? A Review of International Economic Sanctions as an Option' (1994) 24 *Georgia Journal of International & Comparative Law* 307-46.
- Pollock, Frederick, *The League of Nations* (1920) Steven & Sons, London, 146-60.
- Post, Harry H.G., *International Economic Law and Armed Conflict* (1994) Martinus Nijhoff, Dordrecht.
- Potter, Pitman B., 'Sanctions Against a Recalcitrant State' in Eaton, Howard O. (ed.), *Federation: the Coming Structure of World Government* (1944) University of Oklahoma Press, Norman OK, 104-14.
- Potter, Pitman B., 'Sanctions and Security; an Analysis of the French and American Views' (1932) *Geneva Special Studies* vol III, no. 2.
- Prins, Gwyn and Sellwood, Elizabeth, 'Global security problems and the challenge to democratic process' in Archibugi, Daniele, Held, David and Köhler, Martin (eds), *Re-imagining political community: studies in cosmopolitan democracy* (1998) Polity Press, Cambridge UK, 252 - 72.
- Przetacznik, Franciszek, *The Philosophical and Legal Concept of War* (1994) Edwin Mellen Press, Lewiston NY.
- Przeworski, Adam, *Capitalism and Social Democracy* (1985) Cambridge UP, Cambridge.
- Puissochet, Jean-Pierre, 'The Court of Justice and international action by the European Community: the example of the embargo against the Former Yugoslavia' (1997) 20 *Fordham ILJ* 1557-76.
- Quigley, John, 'Prospects for the International Rule of Law' (1991) 5 *Emory ILR*, 311-20.
- Quigley, John, 'The New World Order and the Rule of Law' (1992) 18 *Syracuse Journal of International Law & Commerce* 75-110.
- Quigley, John, 'The United Nations Security Council: Promethean Protector or Helpless Hostage?' (2000) 35 *TILJ* 129-172.
- Raber, Douglas, *Librarianship and Legitimacy: the Ideology of the Public Library Inquiry* (1997) Greenwood Press, Conn.
- Ratner, Steven R., 'The Security Council and International Law', in Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004) Lynne Rienner, Boulder, CO, 591-605.
- Rawls, John, *A Theory of Justice* (1971) Harvard UP, Cambridge, MA.
- Rawls, John, *Political Liberalism* (1993) Columbia UP, NY.
- Raz, Joseph (ed.), *Authority* (1990) Blackwell, Oxford, UK.
- Raz, Joseph, 'Introduction' in Raz, Joseph (ed.), *Authority* (1990) Blackwell, Oxford, UK, 1-19.
- Reid, Natalie, Eckert, Sue E., & Chopra, Jarat, 'Targeted Financial Sanctions: Harmonizing National Legislation and Regulatory Practices', in Cortright, David & Lopez, George A. (eds), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD, 65-86.
- Reid, Natalie, Eckert, Sue E., Chopra, Jarat, & Biersteker, Thomas J., *Targeted Financial Sanctions: Harmonizing National Legislation and Regulatory Practices* (?) Thomas J. Watson Jr. Institute for International Studies, Rhode Island (forthcoming - seek permission to quote).

- Reiger, Caitlin, 'Preferred Futures for the United Nations' (book review) (1996) 17 *AYBIL* 275-285.
- Reinisch, August, 'Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions' (2001) 95 *AJIL* 851-72
- Reisman, W. Michael & Stevick, Douglas L., 'The Applicability of International Law Standards to United Nations Economic Sanctions Programmes' (1998) 9 *EJIL* 86-141
- Reisman, W. Michael, 'Institutions and Practices for Restoring and Maintaining Public Order' (1995) 6 *Duke JCIL* 175-86.
- Reisman, W. Michael, 'Sanctions and enforcement' in McDougal, Myres S., & Reisman, W. Michael, *International law essays: a supplement to International law in contemporary perspective* (1981) The Foundation Press, Mineola, NY, 381 - 436.
- Renwick, Robin, *Economic Sanctions* (1981) Center for International Affairs, Cambridge, MASS.
- Richards, David A.J., *Identity and the Case for Gay Rights: Race, Gender, Religion as Analogies* (1999) University of Chicago Press, Ann Arbor.
- Ricoeur, Paul, 'The Political Paradox' in Connolly, William (ed.), *Legitimacy and the state* (1984) NYU Press, New York, 250-72.
- Rieff, David, 'Were Sanctions Right?' (27 July 2003) *New York Times Magazine*
- Rifaat, Ahmed M., *International Aggression* (1979) Almqvist & Wiksell, Uppsala.
- Rigaux, François, 'Hans Kelsen on International Law' (1998) 9 *EJIL* 325-43.
- Rittberger, Volker (ed.), *Regime Theory and International Relations* (1993: PB reprint from 1997) Oxford UP, Oxford.
- Roberts, Adam & Guelff, Richard (eds), *Documents on the Laws of War* (1989) Clarendon Press, Oxford.
- Roberts, Adam & Guelff, Richard, *Documents on the Laws of War* (1989: 2nd edition) Clarendon Press, Oxford.
- Robey, David (ed.), *Structuralism: An Introduction* (1973) Clarendon Press, Oxford.
- Robson, Ruthann, *Lesbian (Out)Law: Survival Under the Rule of Law* (1992) Firebrand Books, Ithaca, NY.
- Roemer, William F., *The Ethical Basis of International Law* (1928) University of Notre Dame, Indiana.
- Rogers, Elizabeth S., 'Economic Sanctions and Internal Conflict' in Brown, Michael E., *The International Dimensions of Internal Conflict* (1996) John F. Kennedy School of Government, Cambridge, MA, 411-34.
- Ronen, Dov, *The Challenge of Ethnic Conflict, Democracy and Self-Determination in Central Europe* (1997) Frank Cass, Portland, OR, 77-105.
- Roper, John et al, *Keeping the Peace in the Post-Cold War Era: Strengthening Multilateral Peacekeeping* (1991) The Trilateral Commission, New York.
- Rose, Gideon, 'Haiti' in Haass, Richard N.(ed.), *Economic sanctions and American diplomacy* (1998) Council on Foreign Relations, New York, 57-84.
- Rose, Gideon, 'Libya' in Haass, Richard N.(ed.), *Economic sanctions and American diplomacy* (1998) Council on Foreign Relations, New York, 129-56.
- Rosen, Frederick, 'Legitimacy: a Utilitarian View' in Moulakis, Athanasios (ed.), *Legitimacy/Légitimité* (1985) de Gruyter & Co, Berlin, 67-78
- Rousseau, Jean-Jacques, *The Social Contract* (1761) (1988: translated by G.D.H. Cole) Prometheus Books, Buffalo, NY.
- Roxburgh, Ronald F., 'The Sanction of International Law' (1920) 14 *AJIL* 26-37.
- Royal Institute of International Affairs, *International Sanctions* (1938) OUP, London.
- Royal Institute of International Affairs, *Sanctions: the Character of International Sanctions and their Application* (1935) OUP, New York.
- Rubin, Alfred P., *Ethics and authority in international law* (1997) Cambridge UP, Cambridge.

- Rudolf, Peter, 'Power Without Principles? Ethical Problems of International Economic Sanctions' (1998) 57 *Law and State* 9-21.
- Rupert, Jake, "Canada fights to clear man's name: Liban Hussein on list of alleged financiers of al-Qaeda" (13 June 2002) *The Ottawa Citizen*
- Rydell, Randy, 'Monitoring United Nations Arms Embargoes', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 143-61.
- Sanbrook, Roger, 'Improving Enforcement of Arms embargoes at the Border', in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 139-41
- Sandel, M., *Liberalism and the Limits of Justice* (1982) Cambridge UP, Cambridge.
- Sarooshi, Danesh, *The United Nations and the development of collective security: the delegation by the UN Security Council of its chapter VII powers* (1999) Oxford UP, Oxford.
- Sassòli, Marco, 'Sanctions and International Humanitarian Law – commentary', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 241-8.
- Saussure, Ferdinand de, *Course in General Linguistics* (1959) Philosophical Library, NY.
- Schaar, John H., 'Legitimacy in the Modern State' in Connolly, William (ed.), *Legitimacy and the state* (1984) NYU Press, New York, 104-33.
- Schachter, Oscar, 'Dispute Settlement and Countermeasures in the International Law Commission' (1994) 88 *AJIL* 471-7.
- Schachter, Oscar, 'Metaphors and Realism in International Law' (2002) 96 *ASIL Proceedings* 268-9.
- Schachter, Oscar, 'Self-Defence and the Rule of Law' (1989) 83 *AJIL* 259-277.
- Schachter, Oscar, 'The Quasi-judicial Role of the Security Council and the Security Council' (1964) 58 *AJIL* 960-965.
- Schachter, Oscar, 'The UN Legal Order: an Overview' in Joyner, Christopher C. (ed.), *The United Nations and International Law* (1997) University Press, Cambridge UK, 3-26.
- Schachter, Oscar, *International Law in Theory and Practice* (1991) Martinus Nijhoff, Dordrecht.
- Scharf, Michael P., & Dorosin, Joshua L., 'Interpreting UN Sanctions: the Rulings and Role of the Yugoslavia Sanctions Committee' (1993) 19 *Brooklyn JIL* 771-827.
- Scharf, Michael P., 'The Lockerbie Trial Verdict' *ASIL Insights* [available on-line at www.asil.org], February 2001.
- Schiffer, Walter, 'The Idea of Collective Security' in Larus, Joel (ed.), *From Collective Security to Preventive Diplomacy* (1965) John Wiley, NY, 187-202.
- Schönenberger, Christian, 'Evasion and Control of Financial Sanctions – Practical Considerations', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 125-6.
- Schrijver, Nico, 'The Changing Nature of State Sovereignty' (1999) *BYBIL* 65-98.
- Schrijver, Nico, 'The Use of Economic Sanctions by the United Nations Security Council: an International Law Perspective' in Post, Harry H.G., *International Economic Law and Armed Conflict* (1994) Martinus Nijhoff, Dordrecht, 123-62.
- Schumpeter, Joseph A., *Capitalism, Socialism and Democracy* (1987: 6th edition) Unwin Paperbacks, London.
- Scorlemer, Sabine von, 'Human Rights: Substantive and Institutional Implications of the War Against Terrorism' (2003) 14 *EJIL* 265-282
- Scott, Craig, Quresho, Abid, Michell, Paul, Kalajdzic, Jasminka, Copeland, Peter, Chang, Francis, 'A Memorial for Bosnia: Framework of Legal Arguments Concerning the

- Lawfulness of the Maintenance of the United Nations Security Council's Arms Embargo on Bosnia and Herzegovina' (1994) 16 *Mich. JIL* 1-134.
- Scott, James Brown, *The Spanish Conception of International Law and of Sanctions* (1934) Carnegie Endowment for International Peace, Washington DC.
- Scott, Shirley, 'International Law as Ideology: theorizing the relationship between international law and international politics' (1994) 5 *EJIL* 313-325.
- Second Interlaken Seminar on Targeting UN Financial Sanctions, 29-31 March 1999*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken II"), available on-line at: <http://www.smartsanctions.ch/Papers/12/finrep.pdf>.
- Sen, Amartya & Williams, Bernard (eds), *Utilitarianism and Beyond* (1982) Cambridge UP, Cambridge.
- Serres, Olivia Wilmot, *The Authenticated Proofs of the Legitimacy of Olive, the Princess of Cumberland, and Duchess of Lancaster* (1825) E. Williams, London.
- Shapiro, Ian (ed.), *The Rule of Law* (1994) *Nomos*, Vol. XXXVI, New York University Press, NY.
- Shapiro, Ian, *The Evolution of Rights in Liberal Theory* (1986) Cambridge UP, Cambridge.
- Shaw, Malcolm N., *International Law* (1997: 4th ed.) Cambridge UP, Cambridge, UK.
- Shearer, Ivan A., *Starke's International Law* (1994) Butterworths, London.
- Sicilianos, Linos-Alexander, 'The Relationship Between Reprisals and Denunciation or Dupension of a Treaty' (1993) 4 *EJIL* 341-59.
- Simma, Bruno & Paulus, Andreas L., 'The "International Community": Facing the Challenge of Globalization: General Conclusions' (1998) 9 *EJIL* 266-77.
- Simma, Bruno (ed.), *The Charter of the United Nations* (1995) Oxford UP, Oxford.
- Simma, Bruno (ed.), *The Charter of the United Nations: A Commentary* (1995) C.H. Beck, München.
- Simma, Bruno (ed.), *The Charter of the United Nations: a Commentary* (2002: 2^d edition) Oxford UP.
- Simma, Bruno, 'Regional Enforcement of Community Objectives', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 117-22.
- Simons, Geoffrey L., *Imposing economic sanctions: legal remedy or genocidal tool?* (1999) Pluto Press, London.
- Simpson, Gerry J., 'Imagined Consent: Democratic Liberalism in International Legal Theory' (1994) 15 *AYBIL* 103-28.
- Simpson, Gerry J., 'Problems and Process: international law and the way we use it' (1995) 16 *AYBIL* 345-352.
- Simpson, Gerry, 'Is International Law Fair? (book review)' (1996) 17 *Mich. JIL* 615-42.
- Simpson, Gerry, 'The Great Powers, Sovereign Equality and the Making of the United Nations Charter' (2000) 21 *AYBIL* 133-58.
- Simsovic, Douglas J., 'No fixed address: universality and the rule of law' (2001) 35 *Revue Juridique Themis* 739-773.
- Slater, Jerome, 'The Limits of Legitimization in International Organizations: the Organization of American States and the Dominican Crisis' (1969) 23 *International Organization* 48-72.
- Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) *Nomos*, Baden-Baden.
- Smart, J.J.C. & Williams, Bernard, *Utilitarianism; For and Against* (1973) Cambridge UP, Cambridge.
- Smith, Adam, *The Wealth of Nations* (1775) (1976: Clarendon Press, Oxford).
- Smith, Edwin M., 'Economic Sanctions: do they work? At what cost?' Speech presented at Brown University, December 7 1995.
- So, Kuk-song, *The Identity of the Korean people : a history of legitimacy on the Korean*

- Peninsula* (1983) Research Center for Peace and Unification, Seoul, Korea.
- Somavia, Juan, 'The Humanitarian Responsibilities of the UN Security Council: Ensuring the Security of People' in Muldoon, James P., Aviel, JoAnn Fagot, Reitano, Richard, & Sullivan, Earl (eds.), *Multilateral Diplomacy and the United Nations Today* (1999) Westview Press, Boulder, CO, 54-67.
- Soons, Alfred H.A., 'Enforcing the Economic Embargo at Sea', in Gowlland-Debbas, Vera (ed.), *United Nations Sanctions and International Law* (2001) Kluwer Law International, The Hague, 307-24.
- Spaight, J.M., *Pseudo-Security* (1928) Longmans, London.
- Spencer, J., 'The Italian-Ethiopian Dispute and the League of Nations' (1937) 31 *AJIL* 614-41.
- Sponeck, H.C. Graf, 'Sanctions and Humanitarian Exemptions: A Practitioner's Commentary' (2002) 13 *EJIL* 81-7.
- Steans, Jill, *Gender and International Relations: an Introduction* (1998) Polity Press, Cambridge, UK.
- Stedman, Stephen John, 'The Former Yugoslavia' in Haass, Richard N.(ed.), *Economic sanctions and American diplomacy* (1998) Council on Foreign Relations, New York, 177-96.
- Steinberg, Richard H., 'Realism in International Law' (2002) 96 *ASIL Proceedings* 260-2.
- Stephanides, Joseph, 'A Brief Overview of United Nations Applied Sanctions', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 53-66.
- Sternberger, Dolf, 'Legitimacy' in Sills, David (ed.), *International Encyclopaedia of the Social Sciences* (1968) vol. 9, 245.
- Stirling, Patricia, 'The Use of Trade Sanctions as an Enforcement Mechanism for Basic Human Rights: a Proposal for Addition to the World Trade Organization' (1996) 11 *AUJILP* 1-46.
- Stokke, Olav Schram, & Vidas, Davor (eds.), *Governing the Antarctic: the Effectiveness and Legitimacy of the Antarctic Treaty System* (1996) Cambridge UP, New York.
- Stremlau, John, *Sharpening International Sanctions: Toward a Stronger Role for the United Nations* (1996) Carnegie Commission on Preventing Deadly Conflict, Washington, DC.
- Stuyt, A.M., 'Reflections on International Propaganda' in Meijers, H. & Vierdag, E.W. (eds), *Essays on International Law and Relations in Honours of A.J.P. Tammes* (1977) Sijthoff, Leyden, 274-86.
- Sucharipa-Behrmann, Lilly R., & Franck, Thomas M., 'Preventive Measures' (1998) 30 *NYUJILP* 485-537.
- Sullivan, Earl, 'The United Nations: Dealing with Threats to the Peace in the Post-Cold War Era' in Muldoon, James P., Aviel, JoAnn Fagot, Reitano, Richard, & Sullivan, Earl (eds.), *Multilateral Diplomacy and the United Nations Today* (1999) Westview Press, Boulder, CO, 44-53.
- Sunstein, Cass R. (ed.), *Feminism and Political Theory* (1990) University of Chicago Press, Chicago.
- Swindells, Felicia, 'U.N. Sanctions in Haiti: a Contradiction under Articles 41 and 55 of the U.N. Charter' (1997) 20 *Fordham ILJ* 1878-1960.
- Szasz, Paul, 'General Law-Making Processes' in Joyner, Christopher C. (ed), *The United Nations and International Law* (1997) University Press, Cambridge UK, 27-64.
- Szasz, Paul C., 'The Security Council Starts Legislating' (2002) 96 *AJIL* 900-905.
- Tacsan, Joaquín, *The dynamics of international law in conflict resolution* (1992) Martinus Nijhoff, Dordrecht.
- Targeted Financial Sanctions: A Manual for Design and Implementation. Contributions from*

- the Interlaken Process* (2001) Thomas J. Watson Jr. Institute for International Studies, Providence, RI.
- Teitel, Ruti G., 'Humanity's law: rule of law for the new global politics' (2002) 35 *Cornell ILJ* 355-87.
- Teixeira da Silva, Pascal, 'Weapons of Mass Destruction: The Iraqi Case', in Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004) Lynne Rienner, Boulder, CO, 205-18.
- Tesón, Fernando, 'The Kantian theory of international law' (1992) 92 *Columbia Law Review* 53-102.
- The Impact of Sanctions on Iraq: the Children are Dying. Reports by the UN Food and Agriculture Organization, Ramsey Clark and World Leaders* (1996) World View Forum, New York.
- The Netherlands (non-paper), 'Administering Financial Sanctions: Problems and Solutions', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ('Final Report of Interlaken I': available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 121-4.
- The Stanley Foundation, *Getting Down to Cases: Enforcing Security Council Resolutions* (1998) The Stanley Foundation, Muscatine, IA.
- The Stanley Foundation, *Political Symbol or Policy Tool? Making Sanctions Work: Report of the Twenty-Fourth United Nations Issues Conference* (1993) The Stanley Foundation, Muscatine, Iowa.
- The Stanley Foundation, *US Sanctions Policy: Balancing Principles and Interests: Report of the Thirty-Eighth Strategy for Peace*, US Foreign Policy Conference (1997) The Stanley Foundation, Muscatine, Iowa.
- The United Nations Association of the United States of America & The Project on Justice in Times of Transition of Harvard University, *A Policy Report of the Partnership Program on Peace-building and Rule of Law* (2003) United Nations Association of the United States of America, NY, NY.
- Thomson, Judith Jarvis, *The Realm of Rights* (1990) Harvard UP, Cambridge, Mass..
- Toward Peace and Justice: A symposium on Methods for the Prevention of War and the Achievement of International Justice* (1937) Friends' Peace Committee, Philadelphia, PA.
- Tsebelis, G., 'Are sanctions effective?' (1990) 34 *Journal of Conflict Resolution* 3-28.
- Tyler, Tom R., *Why People Obey the Law* (1990) Yale UP, New Haven, Conn.
- Unger, Roberto Mangabeira, *The Critical Legal Studies Movement* (1983) Harvard UP, Cambridge, Mass..
- UNICEF, *Results of the 1999 Iraq Child and Maternal Mortality Surveys* (1999), UNICEF, New York.
- United Nations Department of Public Information, *The United Nations and the Iraq-Kuwait Conflict 1990-1996* (1996) UNDPI, New York (The UN Blue Book Series, Volume IX).
- United Nations Department of Public Information, *The United Nations and the Situation in the Former Yugoslavia* (Reference Paper Revision 4: 1995) UNDPI, New York.
- United Nations Office for the Coordination of Humanitarian Affairs, *Coping with the Humanitarian Impact of Sanctions: an OCHA Perspective* (December 1998) UN Office for the Coordination of Humanitarian Affairs, New York.
- United Nations Sanctions Secretariat, 'The Experience of the United Nations in Administering Arms Embargoes and Travel Sanctions' in *Smart Sanctions: the Next Steps. The Debate on Arms Embargoes and Travel Sanctions within the 'Bonn-Berlin Process'* (2001) Nomos, Baden-Baden, 45-62.
- United Nations Strategic Planning Unit, Executive Office of the Secretary-General, 'UN sanctions: How effective? How necessary?' in *Final report of the 2nd Interlaken Seminar on Targeting United Nations Sanctions, held from 29-31 March 1999* (April

- 1999) Bern, Swiss Federal Office for Foreign Economic Affairs, 101-115.
- United Nations, *Repertoire of the Practice of the Security Council*, Various Supplements, United Nations, New York.
- United Nations, *Repertory of Practice of United Nations Organs*, Various Supplements, United Nations, New York.
- United States Department of State, *UN Sanctions Against Belgrade: Lessons Learned for Future Regimes* (1996) US Dept of State, Washington, DC.
- Vartanian, Thomas P., Ledig, Robert H., & Bruneau, Lynn, *21st Century Money, Banking & Commerce* (1998) Fried, Frank, Harris, Schriver & Jacobson, Washington D.C..
- Väyrynen, Raimo (ed.), *Globalization and Global Governance* (1999) Rowman & Littlefield, Lanham, MD.
- Venneman, Nicola, Country Report on the European Union (2003) [available at <http://edoc.mpil.de/conference-on-terrorism/index.cfm> (publications): last visited on 17 July 2003]
- Verosta, Stephan, 'International Law in Europe and Western Asia between 100 and 650 A.D.' (1964) 113 *Recueil des Cours* 485-617.
- Verzijl, J.H.W., *International Law in Historical Perspective* (1968) A.W. Sijthoff, Leyden, vols. I & VIII.
- Vidich, Arthur J., & Glassman, Ronald M. (eds), *Conflict and Control: Challenge to Legitimacy of Modern Governments* (1979) Sage Publications, Beverly Hills, CA.
- Vinokur, Martin B., *More than a Game: sports and politics* (1988) Greenwood Press, NY.
- Von Martens, G.F., *Compendium of the Law of Nations* (1802) Corbett & Morgan, London.
- Vradenburgh, Anna M., 'The Chapter VII Powers of the United Nations Charter: Do They "Trump" Human Rights Law?' (1991) 14 *Loyola of LA International Court of Justice* 175-205.
- Vries, Antonius W. de, 'European Union Sanctions against the Federal Republic of Yugoslavia from 1998 to 2000: A Special Exercise in Targeting', in Cortright, David & Lopez, George A. (eds), *Smart Sanctions: Targeting Economic Statecraft* (2002) Rowman & Littlefield, Lanham, MD, 87-108.
- Waldron, Jeremy (ed.), *Theories of Rights* (1984) Oxford UP, Oxford.
- Walker, Thomas Alfred, *A Manual of Public International Law* (1895) University Press, Cambridge.
- Wall, Christopher, 'Human Rights and Economic Sanctions: the new imperialism' (1998) 22 *Fordham ILJ* 577-611.
- Wallenstein, Peter, Staibano, Carina & Eriksson, Mikael, *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options* (Report of the Stockholm Process on the Implementation of Targeted Sanctions) (2003) Uppsala University, Uppsala
- Walsum, Peter van, 'The Iraq Sanctions Committee', in Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004) Lynne Rienner, Boulder, CO, 181-93.
- Walters, F., *A History of the League of Nations* (1960) Oxford UP, NY.
- Walzer, Michael, *Spheres of Justice: a defense of pluralism and equality* (1983) Basic Books, NY.
- Watts, Sir Arthur, 'The International Rule of Law' (1993) 36 *German YBIL* 15-45.
- Weber, Max, *Economy and Society* (1978: English translation edited by Guenther Roth & Claus Wittich) University of California Press, Berkeley.
- Wedgwood, Ruth, 'The Enforcement of Security Council Resolution 687: The Threat of Force Against Iraq's Weapons of Mass Destruction' (1998) 92 *A.J.I.L.* 724-8.
- Weisberg, D. Kelly (ed.), *Feminist Legal Theory* (1993) Temple UP, Philadelphia.
- Weiss, Thomas G., Cortright, David, Lopez, George A., & Minear, Larry (eds.), *Political Gain*

- and *Civilian Pain: humanitarian impacts of economic sanctions* (1997) Rowman & Littlefield, Lanham, MD.
- Weiss, Thomas G., Cortright, David, Lopez, George A., & Minear, Larry, 'Economic Sanctions and Their Humanitarian Impacts: An Overview', in Weiss, Thomas G., Cortright, David, Lopez, George A., & Minear, Larry (eds.), *Political Gain and Civilian Pain: humanitarian impacts of economic sanctions* (1997) Rowman & Littlefield, Lanham, MD, 15-34.
- Wellman, Carl, *A Theory of Rights: Persons Under Laws, Institutions, and Morals* (1985) Rowman & Allenheld, Totowa, NJ.
- Werle, G., "'We asked for justice and got the rule of law": German courts and the totalitarian past' (1995) 11 *South African Journal on Human Rights* 70-83.
- Werleigh, Claudette Antoine, 'The Use of Sanctions in Haiti: assessing the economic realities' in Cortright, David & Lopez, George (eds), *Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World* (1993) Goshen, IN, 161-71.
- Westlake, John, *International Law* (1913: 2nd edition) Cambridge UP, Cambridge, 2 vols (Vol. I: *Peace*; & Vol. II: *War*).
- Weston, Burns H., Falk, Richard A., & Charlesworth, Hilary, *International Law and World Order* (1997: 3rd ed) West Group, St. Paul, MINN, 1266-1302.
- Weston, Burns, 'SCR 687 and Persian Gulf Decision-Making: Precarious Legitimacy' (1991) 85 *AJIL* 516-35.
- Wheaton, Henry, *Elements of International Law* (1904: 4th ed.; edited by Atlay, J.B.), Stevens & Sons, London.
- Wheaton, Henry, *Elements of International Law* (8th ed.) (1866) Little, Brown & Co, Boston.
- Wheaton, Henry, *Wheaton's International Law* (1944: seventh ed.; edited by Keith, A. Berriedale) Stevens & Sons, London.
- White, N.D., *Keeping the Peace: the United Nations and the Maintenance of International Peace and Security* (1993) Manchester U.P., Manchester.
- White, N.D., *The Law of International Organisations* (1996) Manchester UP, Manchester.
- Wild, Payson S., *Sanctions and Treaty Enforcement* (1934) Harvard UP, Cambridge Mass..
- Wildeman, J., 'The Philosophical Background of Effectiveness' in Meijers, H. & Vierdag, E.W. (eds), *Essays on International Law and Relations in Honour of A.J.P. Tammes* (1977) Sijthoff, Leyden, 335-51.
- Williamson, Edwin D., 'Realism Versus Legalism in International Relations' (2002) 96 *ASIL Proceedings* 262-5.
- Winer, Anthony S., 'The CISG Convention and Thomas Franck's Theory of Legitimacy' (1998) 19 *J. Intl. L. Bus.* 1-56.
- Wolcher, E., 'What is the rule of law? Perspectives from Central Europe and the American Academy' (2003) 78 *Washington LR* 515-24.
- Wolff, R.P., 'The Conflict Between Authority and Autonomy' in Raz, Joseph (ed.), *Authority* (1990) Blackwell, Oxford, UK, 20-31
- Wood, Richard R., 'Methods of Achieving International Justice' in *Toward Peace and Justice: A symposium on Methods for the Prevention of War and the Achievement of International Justice* (1937) Friends' Peace Committee, Philadelphia, PA, 5-11.
- Woodhouse, Tom, Bruce, Robert, & Dando, Malcolm (eds), *Peacekeeping and Peacemaking: Towards Effective Intervention in post-Cold War Conflicts* (1997) St.Martin's Press, New York.
- Woolsey, Theodore D., *Introduction to the Study of International Law* (6th ed) (1888) Sampson Low, London.
- Wright, Anthony, *Socialisms: Theories and Practices* (1986) Oxford UP, Oxford.
- Wright, Quincy, 'The Outlawry of War' (1925) 19 *AJIL* 76-103.
- Wright, Quincy, 'The Test of Aggression in the Italo-Ethiopian War' (1936) 30 *AJIL* 45-56.

- Wyatt, Thomas C., & Gal, Reuven (eds), *Legitimacy and Commitment in the Military* (1990) Greenwood Press, NY.
- Yoshikawa, Motohide, 'Implementation of Sanctions Imposed by the United Nations Security Council – Japan's Experience', in *Expert Seminar on Targeting UN Financial Sanctions, 17-19 March 1998, Interlaken, Switzerland*, Swiss Federal Office for Foreign Economic Affairs, Bern ("Final Report of Interlaken I": available on-line at: <http://www.smartsanctions.ch/Papers/schlussbericht.pdf>), 105-11.
- Zaidi, Sarah, 'Humanitarian Effects of the Coup and Sanctions in Haiti', in Weiss, Thomas G., Cortright, David, Lopez, George A., & Minear, Larry (eds.), *Political Gain and Civilian Pain: humanitarian impacts of economic sanctions* (1997) Rowman & Littlefield, Lanham, MD, 189-212.
- Zamora, Stephen, 'Economic Relations and Development' in Joyner, Christopher C. (ed), *The United Nations and International Law* (1997) University Press, Cambridge UK, 232-86.
- Zartman, William, 'Intervening to Prevent State Collapse' in Muldoon, James P., Aviel, JoAnn Fagot, Reitano, Richard, & Sullivan, Earl (eds.), *Multilateral Diplomacy and the United Nations Today* (1999) Westview Press, Boulder, CO, 68-77.
- Zolo, Danilo, 'Hans Kelsen: International Peace through International Law' (1998) 9 *EJIL* 306-24.